राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 26 जुलाई, 2019 / 04 श्रावण, 1941

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला–4, 25 जुलाई, 2019

संख्या वि0 सं0 / स्था0 / सेवा नि0 / 6–30 / 80.––अध्यक्ष, हिमाचल प्रदेश विधान सभा सहर्ष आदेश देते हैं कि श्री बुद्धजीत नेगी, उप–सचिव (रिपोर्टिंग), हिमाचल प्रदेश विधान सभा दिनांक 30–11–2019 (अपराह्न) को सेवानिवृत्ति की आयु पूर्ण होने पर एफ0 आर0 56 के उपबन्धों के अन्तर्गत सेवानिवृत्त होंगे।

हस्ताक्षरित / –
सचिव,
हिमाचल प्रदेश विधान सभा।

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 08th *July,* 2019

No. Shram(A)6-3/2019(Awards) Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh :—

Sl. No	Reference/ Application	Title	Section
1.	Ref. 14/2013	Dwarka Nath *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P. & Anr.	10
2.	Ref. 17/2013	Haider Ali *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P. & Anr.	10
3.	Ref. 18/2013	Girdhari Lal *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P. & Anr.	10
4.	Ref. 15/2013	Arvind Singh *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P. & Anr.	10
5.	Ref. 16/2013	Mohan Lal *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P. & Anr.	10
6.	Ref. 42/2009	Ram Lal *V/s* The Solan District Co-operative Marketing & Federation Ltd. Saproon, Solan.	10
7.	Ref. 19/2010	Gabriel Employees Union *V/s* M/s Federal Mogul Bearing India Ltd., Parwanoo, District Solan, H.P.	10
8.	Ref. 88/2016	Suchitra Kumari *V/s* The Director (Human Resources), M/s SRL Diagnostics Ltd. New Dehli.	10
9.	Ref. 07/2015	Raj Kumar Sharma *V/s* M/s Gillette India Ltd. through its General Manager, Katha, Baddi, District Solan, H.P.	10
10.	Ref. 38/2019	Sh. Jeet Chand *V/s* The GM-*cum*-HOP, HPPCL & Ors.	10
11.	Ref. 40/2012	Rajneesh Kumar *V/s* M/s Hindustan Uniliver Ltd., Village Balyana Barotiwala, Tehsil Kasauli, District Solan, H.P through its Managing Director.	10

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Ref. No. 14 of 2013

Instituted on 24-4-2013

Decided on 17-4-2019

Dwarka Nath s/o late Shri Mahurd Nand C/o Shri Girdhari Lal, r/o House No. 1429, Kamal Nagar Kalka, District Panchkuka, Haryana . .*Petitioner.*

Versus

1. M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, HP through its General Manager.

2. The Factory Manager, M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

ORDER/AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of services of Shri Dwarka Nath s/o Late Shri Mahurti Nand C/o Shri Girdhari Lal, House No. 1429, Kamal Nagar, Kalka, District Panchkula Haryana *w.e.f.* 5-4-2012 by the management of M/s Federal Mogul Bearing India Ltd., Plot No. 5 Sector-2 Parwanoo, District Solan, H.P. after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement in service, back-wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In pursuance to the aforesaid reference, it is the pleaded case of the petitioner in the statement of claim that he came to be appointed as an operator on 13-12-1989 and worked as such till 3-11-2008. The petitioner came to be placed under suspension *w.e.f.* 3-11-2008 and was eventually dismissed *w.e.f.* 5-4-2012 on false allegations and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act).

3. The work and conduct of the petitioner was always upto the mark. He was the elected President of the workers union.

4. It is further the averred case of the petitioner that the allegations leveled against him *vide* chargesheets dated 28-7-2008 and 8-9-2008 were totally false and baseless. The chargesheets were supplied to the petitioner only after the enquiry proceedings had started. Initially the company had leveled false allegations against certain persons *vide* a letter dated 9-7-2008. The

names of some of the persons were deleted and those of the petitioner and other union leaders were retained just to create pressure upon them to compromise/withdraw the cases filed against the company. The workers had filed applications for increasing the retirement age from 55 years to 60 years. The company had filed SLP No. 9163/2008 before the Hon'ble Supreme Court of India, which was pending adjudication and the chargesheet thus had been issued to the petitioner and other union leaders to create pressure upon them to compromise the matter.

5. It is further the case of the petitioner that the enquiry officer Shri V.K Gupta had fixed the enquiry on 1-11-2008 and no information had been given to the petitioner. He was only informed about the enquiry fixed on 15-11-2008. It is only on that date the petitioner came to know about the chargesheet dated 28-7-2008 and 8-9-2008. It was on the asking of the enquiry officer that the respondent had supplied the two chargesheets to the petitioner on 15-11-2008, which is stated to be totally illegal and against the basic principles of natural justice.

6. It is also the averred case of the petitioner that he never instructed any operator to stop working on the machines on 8-7-2008. The operators had never sat idle. The petitioner never went to the de-burring station and never threatened any worker to stop work. The petitioner has even denied that on 9-7-2008, he and other co-workers namely S/Shri Girdhari Lal, Arvind Singh and Harvinder had gheraoed the General Manager Operation-*cum*-Factory Manager and Dy. GM manufacturing and never distracted the staff members from operating the machines. The entire allegations in this behalf leveled by the management were stated to be baseless and just to harass and terminate the services of the petitioner.

7. It is also the averred case of the petitioner that an earlier domestic enquiry against Kulwant Kumar, Nirmal Singh and Prakash for submitting false medical claim was also unfair, improper and against the basic principles of natural justice. They had been dismissed from service illegally and without any credible proof. The workers union had never resorted to any strike on 8-7-2008 against their dismissal. The workers had requested the company to allow them to work in the factory. The workers were not allowed to work in the company *w.e.f.* 14-7-2008 to 31-10-2008. It is only on the intervention of the Labour Commissioner that the workers were allowed to resume the work. The dismissal of the three workers was also stated to be in violation of clause 17(3) of a settlement dated 2-6-2007.

8. The petitioner was allowed to enter the factory only on 3-11-2008 but after some hours he was placed under suspension.

9. Further per the petitioner the Labour Officer, Solan had never observed that the workers of the respondents were sitting idle and were not doing any work. In fact it was the management which did not allow the workers to work in the factory and had declared a lock-out, which is clear from the statements of one Rakesh Chand Sharma, Production Supervisor and Shri Agya Ram, Security Supervisor of the company. The workers had also made a complaint to the Labour Commissioner, who had prohibited the lock-out declared by the company. The reference had been sent to the Labour Court *vide* Reference No. 58/2008 and the said reference had been partly up-held by the Hon'ble High Court and the company had agreed on a compromise and to pay a lump sum amount of ` 2,60,000/- and increase the salary by ` 7,672/-.

10. It is also averred by the petitioner that the enquiry officer has not conducted the enquiry fairly. No opportunity was afforded to the petitioner to defend his case. The enquiry was started on 1-11-2008 *i.e.* prior to the suspension of the petitioner and that too without intimation to him. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the

directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The enquiry officer chose not to write the exact words said by the witnesses. The enquiry officer has not given any reason for his findings. He had not supplied certain documents sought by the petitioner. The enquiry, as per the petitioner, is totally unfair and violative of the principles of natural justice. The permission sought by the management to dismiss the petitioner on the basis of the aforesaid enquiry is also illegal and beyond the fore-corners of law. The punishment of dismissal is also stated to be disproportionate. The permission granted by the Labour Court to dismiss the services of the petitioner without deciding Reference No. 45/2008 is also not justified in the eyes of law.

11. The petitioner has denied that he has ever indulged in any sort of misconduct including threatening, assaulting, intimidating, insubordination, striking, instigating the workers to participate in a strike. As per the petitioner it was the management who had declared an illegal lock-out and for the said reason alone, the company had agreed to pay a lump sum amount to the workers in Reference No. 58/2008. The charges leveled against the petitioner are false as none of the witnesses have supported the case of the management, as is clear from the statement of Shri Rakesh Sharma and Agya Ram Sharma.

12. The chargesheet dated 28-7-2008 does not talk about the incident dated 8-7-2008 and the chargesheet dated 8-9-2008 is stated to be an afterthought. The intention of the respondent company was mainly to victimize the union leaders including the petitioner.

13. It is thus the case of the petitioner that the action of the respondent management tantamount to unfair labour practice and the action of the respondent is violative of the provisions of Industrial Disputes Act and against the cardinal principles of natural justice. The petitioner is un-employed since 3-11-2008. It is thus prayed that the dismissal of the petitioner *w.e.f.* 5-4-2012 may be quashed and set aside. He may be reinstated in service with all consequential benefits. The suspension of the petitioner *w.e.f.* 3-11-2008 be also quashed and set aside and the petitioner be given full wages *w.e.f.* 3-11-2008 and the company be burdened with heavy damages amounting to ₹ ten lakhs.

14. While contesting the claim the respondents have *inter-alia* raised preliminary objections *vis-à-vis* maintainability and the petitioner having not approached this Court with clean hands. It is also averred that the reference is not maintainable as the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. Since, Reference No. 58/2008 was pending adjudication an application under section 33(1) of the Act was moved to seek permission of the Court, which was granted *vide* order dated 31-3-2012. The punishment was stated to be commensurate with the misconduct of the petitioner.

15. On merits, it is the case of the respondents that the petitioner was issued chargesheets dated 28-7-2008 and 8-9-2008 and he was placed under suspension *w.e.f.* 1-11-2008 in terms of the provisions contained in the Certified Standing Orders of the respondent company. An enquiry in respect of the misconduct referred in the chargesheets was conducted against the petitioner in which he duly participated. The charges stand proved during the course of enquiry and thereupon permission was sought from the Labour Court under section 33 of the Act. He was eventually dismissed *w.e.f.* 5-4-2012. The action of the respondents is stated to be bonafide and as per the provisions of the Act and Certified Standing Orders of the respondent company. The respondents admitted that here was a union by the name and style of Gabriel Employees Union but the petitioner being elected President of the union is denied for want of knowledge.

16. The charges levied against the petitioner in the two chargesheets are stated to be correct and as per the respondent, stand duly proved during the course of the enquiry. Per the respondents on 8-7-2008, the petitioner had questioned the General Manager Operations-*cum*-Factory Manager as to why the services of Kulwant Kumar had been terminated. The petitioner had threatened the General Manager to take back the said Kulwant Kumar into service, failing which the work in the factory would not be allowed. As per the respondent, the petitioner on the same date had instructed all the operators to stop working on the machines. The petitioner had also gone to the de-burring station and threatened the workers not to work. On account of such threats the work in the de-burring section also came to a halt. On 9-7-2008, too the petitioner and one Arvind Singh, Girdhari Lal and Harvinder had stopped the work at the sinter line, leading to a strike.

17. It is further the case of the respondent that the petitioner was chargesheeted for misconduct under clauses 26-B(xvii), 26-B(iii) and 26-B (Li) of the Certified Standings Orders of the respondent company for threatening, assaulting, intermediating, misbehaving with the officers in the factory premises, inciting, participating, intimidating and coercing the employees to strike and stop work. Per the respondents the chargesheets dated 28-7-2008 and 8-9-2008 were sent to the petitioner but he refused to receive the same. He failed to file reply. During the course of the enquiry the reply to the chargesheets were filed by the petitioner. It is denied that the copy of the chargesheets were not supplied to the petitioner. Per the respondents, he refused to receive the chargesheets. The enquiry officer was appointed *vide* letter dated 18-10-2008 and during the course of enquiry the chargesheets were duly provided to the petitioner and he filed the reply to the same. Per the respondents the procedure prescribed for disciplinary action under the Certified Standing Orders of the replying respondent was duly followed.

18. It is the case of the respondent management that the union had resorted to an illegal strike and the replying respondents had sent several communications to them to desist from the strike and to join duty but to no effect. The strike was prohibited by the Labour Commissioner and due intimation of the said was duly sent to the petitioner and the union, however, the workers did not resume duty. The workers had re-joined duty after giving an undertaking that they will work peacefully, maintain discipline and abide by the terms and conditions of the standing orders. The services of Kulwant Kumar, Nirmal Singh and Prakash were terminated in respect of submitting false and fabricated medi-claims.

19. Per the respondents the enquiry had been conducted as per the principles of natural justice and the Certified Standing Orders of the replying respondent. A fair hearing was afforded to the petitioner. The petitioner cross-examined the management witnesses and also examined his witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copy of day-to-day proceedings of the enquiry. The enquiry officer had given a detailed and reasoned enquiry report. The enquiry report was also supplied to the petitioner with second show cause notice and a reply had been duly filed for the same by the petitioner. The rest of the contentions in the claim petition were denied. It is thus prayed that the petition be dismissed, being devoid of merits.

20. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

21. I notice that on 16-5-2014, the following preliminary issue came to be framed by my Learned Predecessor:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP*.

2. Relief:

22. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:

Issue No. 1: No. However, the punishment imposed by the disciplinary authority is disproportionate.

Relief: Consequently, the reference is partly answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

24. A preliminary issue had come to be framed by my Learned Predecessor on 16-5-2014 as to whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice. The case propounded by the petitioner, however in brief was that the chargesheets dated 28-7-2008 and 8-9-2008 were not only false and baseless but were supplied to the petitioner only after the enquiry proceedings had commenced. It is also the case of the petitioner that the enquiry officer so appointed by the respondent management had fixed the enquiry on 1-11-2008 but no information had been given to the petitioner. He was only informed about the enquiry on 15-11-2008. He came to know about the chargesheets after 15-11-2008 only.

25. It is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry fairly. The petitioner had not been afforded proper opportunity to defend his case. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The documents have been not been supplied to the petitioner. The enquiry officer chose not to write the exact words of the witnesses. The enquiry officer had not recorded any reasons to substantiate his findings. The enquiry conducted by the enquiry officer was thus stated to be totally unfair and against the principles of natural justice and the punishment of dismissal was also stated to be disproportionate.

26. On the allegations made in the two chargesheets the petitioner denied having instigated or coerced the workers from resorting to stoppage of work or threatening, assaulting, intermediating, misbehaving or inciting the employees to go on strike on 8-7-2008 and 9-7-2008. As per the petitioner the intention of the respondent company was to victimize the union leaders including the petitioner and to terminate them from service.

27. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. The chargesheets have been duly sent to the petitioner but he refused to receive the same. During the course of enquiry the petitioner had filed reply to the chargesheets. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The petitioner cross-examined the management witnesses. He was duly assisted

by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copies of day-to-day proceedings of the enquiry. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

28. The petitioner while appearing as his own witness as PW-1 has reiterated the averments made in the statement of claim. He has placed on record the letter of dismissal dated 5-4-2012 *vide* Ex. P-1 and various letters granting him increments and appreciations *vide* Exs. P-2 to Ex. P-19. Photographs and certificates earned by the petitioner have been placed on record as Ex. P-22 to Ex. P-40. He has also placed on record the suspension letter dated 1-12-2008 (Ex. P-41) and the orders passed by the Hon'ble High Court in CWP No 4175 of 2012 *vide* Ex. P-42. The demand notice under section 2-A has been placed on record as Ex. P-43.

29. In his cross-examination the petitioner has denied that the chargesheet Ex. R-1 was supplied to him on 28-7-2008 and that he had refused to take the same and thereafter it was sent to him by registered post. However, the petitioner has admitted that the acknowledgement due (AD), Ex. R-3 bears his signatures. The AD annexed along-with the registered letter sent to the petitioner after he refused to take the same has been Exhibited as R-3. It does admittedly bears the signatures of the petitioner. Having admitted his signatures on Ex. R-3 a presumption does arise in law that the petitioner had been sent the chargesheet in question.

30. It further transpire from his testimony that the petitioner had appeared before the enquiry officer on 15.11.2008, though he was not present on the first day *i.e.* on 1-11-2008. The petitioner has himself admitted that he was supplied the chargesheets and its Hindi version for the first time on 15-11-2008. He has also admitted his signatures on the enquiry proceedings of 15-11-2008. On 6-12-2008, again a chargesheet along-with Hindi translations were again supplied to the petitioner apparently the earlier copies were not legible. On 4-2-2009, the statement of witnesses of the management were supplied to the petitioner. The petitioner had demanded certain documents on 10-4-2009 by moving an application (Ex. R-12). He has also admitted that on the objection of the management representative the enquiry officer had asked him to show the relevancy of the documents demanded by him. On 24-4-2009, the petitioner had explained the relevancy of the documents but his request was declined. The copy of the Certified Standing Orders was also supplied to the petitioner on that date. The co-worker of the petitioner Shri Arvind Singh started representing the petitioner in the enquiry and he even cross-examined the four witnesses of the management. The cross-examination of the witnesses has been placed on record as Ex. R-15 (38 pages). It is admitted by the petitioner that the cross-examination of the management witnesses bears his signatures and those of the co-worker Shri Arvind Singh.

31. He has also admitted in his deposition that he had filed the statement of his witnesses S/Shri Harbhajan Singh, Sumera Jhon, Sarla Shah and Arun Sharma. The petitioner had been admittedly cross-examined on 30-5-2009, though, he has submitted that the enquiry officer had not recorded the cross-examination as per his version. An oral complaint is stated to be made to the General Manager in this behalf. The petitioner had filed reply to the chargesheets *vide* Ex. R-24 on 30-5-2009. On 25-6-2009, the petitioner submitted his written arguments *vide* Ex. R-32.

32. It further transpires from the testimony of the petitioner that the respondent company had issued a letter dated 9th September, 2009 *vide* Ex. R-42 along-with enquiry report (Ex. R-43). The petitioner has also admitted that he has filed reply to the same *vide* Ex. R-44.

33. The petitioner has also examined one Shri Arvind Singh as PW-2. The said witness was the defence assistant/co-worker in the enquiry of the petitioner. Per him the enquiry officer had not explained any procedure to him at the beginning of the enquiry. The

enquiry officer did not record the questions put by the defence assistant. He used to write the answer as per his choice. Per this witness the documents demanded by him from the management were also not supplied to him. Certain questions put by him were dis-allowed by the enquiry officer. Per the witness the enquiry was not conducted in a proper and fair manner and the enquiry officer had not followed the principles of natural justice. It is however admitted by the witness that he appeared in the enquiry proceedings for the first time on 2-5-2009. He has admitted cross-examining the witnesses of the management. The questions which were disallowed are already stated to have been recorded in the enquiry proceedings. The witness has admitted that no application in writing was filed by him regarding the disallowing of the questions. He has also admitted that the petitioner had examined his defence witnesses and even the petitioner was cross-examined on 30-5-2009. He has admitted that written arguments were submitted to the enquiry officer on 25-6-2009. He has also admitted that the copies of the day to day enquiry proceedings and the statement of all witnesses were supplied to them and the entire enquiry proceedings were recorded in his presence.

34. The petitioner further examined three witnesses namely Ms. Sarla Shah (PW-5), Shri Harbhajan Singh (PW-6) and Ms. Sumera Jhon (PW-7) to portray that on 8-7-2008 the petitioner and the other union members had not stopped any other worker from doing their work in the factory or the sinter line.

35. The petitioner has further examined one Shri Rakesh Chand, Production Supervisor (PW-3) and Shri Agya Ram, Security Supervisor (PW-4) to contend that they had filed statements before this Court on affidavit that on 8-7-2008 the petitioner and other workers had never threatened any worker to stop the work. The allegations against them were totally false. Even on 9.7.2008, the petitioner and other workers never led a mob of workers in sinter line department and did not Gherao the General Manager. Their statements along-with affidavits have been placed on record as Ex. PW-3/A and Ex. PW-4/A respectively.

36. The respondents on the other hand have examined Shri Balwinder Singh, Co-ordinator HR as RW-1 who has reiterated the averments made in the reply in his affidavit Ex. RW-1/A. Apart from other documents he has placed on record the enquiry report pertaining to three workers S/Shri Kulwant Kumar, Prakash Singh and Nirmal Singh, because of whose termination the petitioner and the workers had stopped work. He has also placed on record the Certified Standing Orders of the company Ex. RW-1/E (Mark RX). The said witness was also the presenting officer or the management representative before the enquiry officer. In his cross-examination he has admitted that the petitioner was the President of the union and his conduct during his entire service was good. He has admitted that the workers union had given an application before the Certifying Officer to increase the retirement age of workers from 55 years to 60 years in the year 1998 and the matter went up till the Hon'ble Supreme Court and was eventually decided in favour of the workers.

37. The respondents have also examined the enquiry officer Shri V. K. Gupta as RW-2. Per him he had intimated the date of enquiry to the petitioner *vide* registered letter dated 21-10-2008. The petitioner was not present on that day as such letter dated 1-11-2008 was issued to the petitioner intimating him the next date as 15-11-2008. On 15-11-2008 the petitioner was present. The chargesheet dated 28-7-2008 and 8-9-2008 along-with documents were handed over to the petitioner. The management was asked to submit additional documents, if any, along-with the list of witnesses on the next day *i.e.* 6-12-2008. On that day the petitioner has sought legible copies of chargesheets which were duly given to him along-with Hindi translations. On 15-12-2008 the enquiry was adjourned at the request of the petitioner. On 5-1-2009 the petitioner had prayed that the enquiry proceedings be deferred in view of the Reference Nos. 45/2008 and 58/2008. The petitioner was asked to provide the copy of the stay order. However, he could not produce the

same. Certain documents were filed by the presenting officer, copies of the same were also supplied to the petitioner. Written statements of the witnesses were sought for 4-9-2009. The petitioner requested for a date for cross-examination. On 10-4-2009 the petitioner asked for certain documents, the relevancy which were objected to by the presenting officer. Eventually on 2-5-2009 for the first time co-worker of the petitioner namely Shri Arvind Singh appeared and the witnesses of the management were cross-examined. The list of questions which were disallowed in the cross-examination of MW-3 were marked. The day-to-day proceedings were duly signed by the petitioner, co-worker and the presenting officer. On 30-5-2009 the statement of the petitioner was recorded. The other witnesses of the management were also examined. The written submissions were submitted by the petitioner and enquiry proceedings dated 25-6-2009 was given to the petitioner. As per this witness due opportunity was afforded to the petitioner to put forth his case and cross-examine the witnesses of the management. The petitioner never objected to the witness being appointed as an enquiry officer. The enquiry has been done in a just fair and impartial manner.

38. The witness has denied that he had not explained the procedure to be adopted in the enquiry, though he admitted that he had not mentioned the same in the enquiry proceedings. He has admitted that there is no reference regarding providing the services of a defence assistant to the petitioner *w.e.f.* 15-11-2008 to 24-4-2009. Per this witness the petitioner had never asked for the services of a defence assistant. He has admitted that his father was a labour law advisor of Gabriel India Ltd. Per this witness he had only disallowed irrelevant questions and he had also recorded the reasons for disallowing the questions. He has admitted that for certain questions the reasons for disallowance has not been written.

39. The respondent management has literally placed on record the entire proceedings of the enquiry starting from chargesheet Ex. R-1 to the enquiry report Ex. R-43. So much so even the day to day proceedings conducted by the enquiry officer have been placed on recorded starting from 15-11-2008 till 30-5-2009 Ex. R-23. The respondents have also placed on record the Certified Standing Orders Ex. RW-1/E (Mark RX) and placed on record the permission granted by this Court for dismissing the services of the respondent Mark RX-1.

40. Much was urged by the learned counsel for the petitioner that the petitioner was placed under suspension for the charges referred in letter dated 28-7-2008 but enquiry was conducted in respect of the charges not only relating to the letter dated 28-7-2008 but also those reflected in the letter dated 8-9-2008. The copy of the chargesheet was never supplied to the petitioner. It was only on 15-11-2008 that the chargesheet was supplied to the petitioner for the first time. The enquiry officer too did not explain the procedure to be adopted. He did not allow the services of defence assistant to the petitioner. Not only this, the enquiry officer did not allowed the application of the petitioner demanding certain documents. The questions put by the petitioner were also rejected by the enquiry officer. He would further contend that there was totally non application of mind and even while recording the reasons in support of his findings the enquiry officer had not given any reasons whatsoever.

41. Per contra it is the contention of the learned counsel for the respondent that the petitioner was afforded all possible opportunity to put his case. He had appeared in all the proceedings. The day-to-day proceedings had been signed by him and were duly supplied to him. Shri Arvind Singh appeared as a defence assistant on 2-5-2009 and only thereafter the management witnesses had been examined. The petitioner being the President of the union was not a novice. He was rather defended by a defence assistant and as such no prejudice has been caused to him. The enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

42. The conjoint reading of the deposition of the parties and the overwhelming documentary evidence on record, does show that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. The AD placed on record by the respondent Ex. R-3 does shows that the petitioner had signed the acknowledgement on 10-9-2009. A presumption in law thus does arises that the copy of the chargesheet apparently had been sent to the petitioner but he refused to receive the same. The petitioner admitted signing the AD Ex. R-3. Even assuming the chargesheet was not supplied the fact remains that it was handed-over to the petitioner on 15-11-2008 by the enquiry officer. The same is not disputed. In fact the petitioner had filed reply to the same. The proceedings of the enquiry starting from 15-11-2008 Ex. R-7 to Ex. R 31 does show that the petitioner had appeared on each and every day when effective orders were passed. His signatures bears testimony to the said fact and so does the signatures of defence assistant after 2-5-2009. In all fairness both the petitioner and defence assistant have admitted that they were supplied the day-to-day proceedings by the enquiry officer. The day-to-day proceedings do show that the adjournments were also granted at the asking of the petitioner as is clear from the order dated 15-5-2009 passed by the enquiry officer in the presence of the defence assistant. On 2-5-2009 the defence assistant had cross-examined one Shri D.K. Sharma MW-1. The proceedings also bear the signatures of both the petitioner and the defence assistant. One odd question has been dis-allowed by the enquiry officer on 2-5-2009 (page 13 of Ex. R-15) the same has been disallowed as it did not pertain to the allegations in the chargesheet. The testimony of RW-2 is duly corroborated by the documentary evidence placed on record *vide* Ex. R-7 to Ex. R-31.

43. The learned counsel for the petitioner thus further contend that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orisa titled as **Management of State Bank of India** Vs. **Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151**. It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an objection has been raised by the presenting officer *vis-a-vis* its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

44. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the Advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmahal Hotel** Vs. **Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd.** Vs. **Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union** Vs. **Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also *ipso facto* does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry officer and as held in **H.V Nirmala** Vs. **Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been

cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 *ipso facto* is not sufficient to vitiate the entire enquiry.

45. Till the recording of the findings is concerned reasonable opportunity has been afforded to the petitioner and so have been the principles of natural justice been followed. The initiation of chargesheet and proving the allegations therein have been done in a manner which are in consonance with the provisions of Certified Standing Orders of the respondent company as reflected in Ex. RW-1/C. The principles of natural justice also have seemingly been complied. As discussed above nothing much was elicited from the documents or the evidence on record to impeach the veracity of the proceedings *vis-à-vis* grant of fair opportunity and the non-compliance of the principles of natural justice. The enquiry proceedings, however culminate with the imposition of penalty holding a person guilty and by way of filling of enquiry report is the first right. The second right however to plead for either no penalty or lesser penalty or even in the conclusion that the guilt stand accepted. This second right is exercisable at the second stage and the second stage consists of the issuance of notice to show cause against the proposed penalty and considering the reply to the notice and deciding upon the penalty.

46. The consideration of the findings recorded by an enquiry officer form an important and material stand before the disciplinary authority. It is incumbent upon the disciplinary authority to consider the report of the enquiry officer and the conclusion reached by him. If such a finding is to be one of the document to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is indeed a negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like an enquiry officer without giving the employee an opportunity to reply to it. As such the disciplinary authority is required to consider the evidence, report of the enquiry officer and the representation of the employee against it before imposing penalty, higher penalty would be the onus of this count. The case in hand pertains to dismissal.

47. Having said so, the perusal of the judgment titled as **Associate Cement Company Ltd.** Vs. **T.C. Shrivashva and others 1984 (Supp.) SCC 87**, however shows that unless the Certified Standing Orders provide for a 2nd show cause notice on the proposed punishment is not a condition precedent for imposing punishment. As per the judgment no enquiry which is otherwise fair and valid will be vitiated by non-offering of such second opportunity.

48. While testing the factual back-ground in the back-ground of the principles set out hereinabove it transpires that the respondent had on 9th September, 2009 *vide* Ex. R-42 sent written communication to the petitioner seeking comments, if any, on the findings of the enquiry officer. The enquiry report Ex. R-43 had also been sent along-with. The petitioner had also replied to the same *vide* Ex. R-44.

49. Looking at the Certified Standing Orders of the respondent company, which has been placed on record as Ex. RW-1/E, the procedure for disciplinary action has been enunciated in para 26 which reads as follows:

"26. Procedure for disciplinary action:

Where the allegation of misconduct against any worker is reported or otherwise come to the notice of the management/manager a chargesheet in writing specifying the

substance of allegations shall be given to the workman concerned requiring him to submit his written explanation within stipulated time which shall not be less than 48 hours. If an "workman refuses to receive the charge sheet, at least in the presence of any other workman, a copy of the chargesheet shall be sent to him by registered post under postal certificate and copy exhibited on the Notice Board. This shall be treated as sufficient evidence of the chargesheet having been served on the delinquent employee.

If the employee fails to submit his explanation within stipulated time, without any sufficient cause being shown, it will be presumed that he has no explanation to offer and action will proceed in the absence of any explanation. On receipt of the explanation, if it is found to be satisfactorily, the matter will be closed, otherwise a regular domestic enquiry will be held by the Manager or his nominee, wherein the workman shall be given reasonable opportunity to defend himself. The management/ manager shall be fully competent to appoint any other outsider as an enquiry officer if they so like. The delinquent workman shall be allowed to be represented assisted by any co-worker employed in the factory or representative as per section 36 of the Industrial Disputes Act, 1947. The charge sheeted employee shall be bound to present himself before the enquiry officer personally. If he fails to do so on the first appointed date, the enquiry officer may adjourn the proceedings to give him sufficient opportunity or may proceed *ex-parte* at this discretion. In case an employee does not present on the adjourned date, it will be a sufficient reason for the enquiry officer to presume that the delinquent employee was deliberately avoiding the participation in the enquiry and to proceed *ex-parte*."

Para 27-A of the Standing Orders further provide the punishment which may be awarded to a workman and the same reads as follow:

27-A depending upon the severity of the misconduct, the punishment awarded to a workman may be any of the following:

1. Dismissal
2. Discharge
3. Suspension
4. Warning/Censure
5. Stoppage of annual increment not exceeding two increments
6. Demotion to the next lower grade

50. The reading of para 27-A shows that it does not provide for a second opportunity to be granted to the delinquent. No requirement has been envisaged in the standing orders to giving the delinquent any opportunity to offer any explanation. In the case in hand the respondents had afforded opportunity to the petitioner to offer comments in respect of the findings recorded by the enquiry officer within five days and the copy of the enquiry report Ex. R-43 had also been supplied along-with.

51. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Associate Cement Company Ltd. *Vs.* T.C Shrivastva and others discussed hereinabove *supra,* it is clear

that the plain reading of the standing orders read as a whole does not warrant an assumption that second show cause notice had to be issued to the petitioner. It cannot thus be said that the enquiry was even vitiated on this count too.

52. For all the reasons detailed hereinabove this Court is constrained to hold that the departmental enquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice much less prejudice de-facto. In the case in hand the petitioner has failed to prove the violation of the mandatory and statutory Rules which would have tantamounted to prejudice. The infringement of Rules which are merely directory in nature the element of de-facto prejudice had to be pleaded and shown, which has not been done in the case in hand. The onus was on the petitioner to have shown the grounds resulting in de-facto prejudice and that he had been put to a disadvantage thereof, which has not been done. In this behalf support can be ably drawn from the judgment of Hon'ble Supreme Court titled as **Union of India** Vs. **Alok Kumar (2010) 5 SCC 349.**

53. However, the standing orders of the respondent company Ex. RW-1/E, though totally silent on the issuance of a 2nd show cause notice does talk of the action to be taken by a disciplinary authority in case of sexual harassment but not relating to imposition of major penalty, like dismissal from service. However, Rule 27-A of the standing orders provide for punishments ranging from dismissal to censure and stoppage of increments. Even, if the respondent was not obligated to issue a show cause for the proposed punishment, the respondent management was duty bound to have considered the nature of charges and its gravity, particularly keeping in view the fact that no past misconduct has been relied upon by the respondent/company. These facts had to be taken into consideration by the disciplinary authority. To this limited extent the breach of principles of natural justice was itself a prejudice and no other "de-facto" prejudice was required to be proved.

54. The gravamen of the allegation in the chargesheet are that the petitioner and the other workmen had on 8-7-2008 and 9-7-2008 gheraoed the General Manager and stopped workers from working on the machines at the production unit and threatened them with dire consequences in case they did not stop work. Admittedly, the petitioner was the President of the union and the other workmen who have been dismissed were also the leaders of the union. The witnesses of the management examined by the enquiry officer *i.e.* MW-1 D.K Sharma, MW-2 Neeraj Gupta DGM, MW-3 Deep Ram Assistant Manager Production and MW-4 Sushil Kumar Sharma Senior Engineer Sinter Line have stated that certain workmen had come and stopped work in the de-burring section and the sinter line. Though, undoubtedly all the witnesses have deposed that the petitioner was leading the workers, but the fact remains that admittedly he was also the president of the union. Except from the threat of lying prostrate on the machines nothing else has been attributed to the workmen. There is no evidence that any collateral damage was done to the machines or the factory. All the witnesses have admitted that there was a strike/lock-out in the factory and the workers had resumed the work only after the Labour Commissioner had passed an order to this effect. Even as per the affidavit filed by RW-2 Shri Balwinder Singh, HR Coordinator there was strike at 10.00 A.M. on 8-7-2008. Per him the strike continued from 8-7-2008 till 30-7-2008. The strike had been prohibited by the Labour Commissioner on 31-7-2008 and the workers had resumed duties only thereafter.

55. It is thus clear that whatever had happened on 8-7-2008 and 9-7-2008 was apparently in view of the dispute having arisen between the management and the workers union. Oblivious of the fact that no notice was required to be issued to the petitioner and other workmen as per the Standing Orders before dismissing them, it was still incumbent upon the disciplinary authority to have taken into consideration the gravity of the misconduct, the previous record of the workmen and any other extenuating or aggravating circumstance at the time of the passing of the order of

dismissal. RW-2 Shri Balwinder Singh who is not only the HR Coordinator but also the presenting officer has admitted that the conduct of the petitioner was good throughout. Moreover, the respondent had not notified to the petitioner or the other workmen anything about his past record in the show cause notice. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

56. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra** Vs. **State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd.** Vs. **Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

57. The facts narrated and discussed hereinabove clearly show that not only have the witnesses only partially supported the case of the workman in the enquiry proceedings but even the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. The factum that the strike had already ensued on 8-7-2008 itself, and the workers were the President and the office bearers of the union did not also weigh with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

58. Thus while holding that the respondents have conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove *supra,* has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove, in such a situation with holding of two increments with cumulative effect will be more than adequate punishment for such an employee. The issue is decided accordingly.

Relief :

As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today this 17th day of April, 2019.

CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 17 of 2013

Instituted on 24-4-2013

Decided on 23-4-2019

Haider Ali s/o Shri Nathu Ram r/o House No.LIG/95, Sector-1, Parwanoo, Distt. Solan, H.P. . .*Petitioner.*

Versus

1. M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. through its General Manager.

2. The Factory Manager, M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. .
.*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

ORDER/AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of services of Shri Haider Ali s/o Shri Nathu Ram, r/o House No.LIG/95, Sector-1, Parwanoo, Distt. Solan, H.P. w.e.f. 5-4-2012 by the management of M/s Federal Mogul Bearing India Ltd., Plot No. 5 Sector-2, Parwanoo, District Solan, HP after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement in service, back-wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In pursuance to the aforesaid reference, it is the pleaded case of the petitioner in the statement of claim that he came to be appointed as an operator on 01-10-1984 and worked as such till 11-11-2008. The petitioner came to be placed under suspension *w.e.f.*11-11-2008 and was eventually dismissed *w.e.f.* 5-4-2012 on false allegations and without complying with the

mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). The dismissal letter was given to the petitioner on 20-4-2012.

3. The work and conduct of the petitioner was always upto the mark. He was the elected General Secretary of the workers union.

4. It is further the averred case of the petitioner that the allegations leveled against him *vide* chargesheets dated 8-9-2008 and 10-11-2008 were totally false and baseless. The chargesheet dated 8-9-2008 was supplied to the petitioner on 22-5-2009 only when the enquiry proceedings had started. Initially the company had leveled false allegations against certain persons *vide* a letter dated 9-7-2008. The names of some of the persons were deleted and those of the petitioner and other union leaders were retained just to create pressure upon them to compromise/withdraw the cases filed against the company. The workers had filed applications for increasing the retirement age from 55 years to 60 years. The company had filed SLP No. 9163/2008 before the Hon'ble Supreme Court of India, which was pending adjudication and the chargesheet thus had been issued to the petitioner and other union leaders to create pressure upon them to compromise the matter.

5. It is further the case of the petitioner that the enquiry officer Shri V. K. Gupta had fixed the enquiry on 22-05-2008 on which date the petitioner had appeared before him. It is only on that date the petitioner came to know about the chargesheet dated 8-9-2008 and 10-11-2008. It was on the asking of the enquiry officer that the respondent had supplied the two chargesheets to the petitioner on 22-05-2008, which is stated to be totally illegal and against the basic principles of natural justice. The chargesheets were duly replied by the petitioner on 3-12-2008.

6. It is also the averred case of the petitioner that he never instructed any operator to stop working on the machines on 8-7-2008**.** The operators had never sat idle. The petitioner never went to the de-burring station and never threatened any worker to stop work. The petitioner has even denied that on 9-7-2008, he and other co-workers namely S/Shri Girdhari Lal, Arvind Singh, Harvinder Singh and Dwarka Nath, had led a mob of workers and gheraoed the General Manager Operation-*cum*-Factory Manager and Dy. GM manufacturing and never distracted the staff members from operating the machines. The entire allegations in this behalf leveled by the management were stated to be baseless and just to harass and terminate the services of the petitioner.

7. It is also the averred case of the petitioner that an earlier domestic enquiry against Kulwant Kumar, Nirmal Singh and Prakash for submitting false medical claim was also unfair, improper and against the basic principles of natural justice. They had been dismissed from service illegally and without any credible proof. The workers union had never resorted to any strike on 8-7-2008 against their dismissal. The workers had requested the company to allow them to work in the factory. The workers were not allowed to work in the company *w.e.f.* 14-7-2008 to 31-10-2008. It is only on the intervention of the Labour Commissioner that the workers were allowed to resume the work. The dismissal of the three workers was also stated to be in violation of clause 17(3) of a settlement dated 2-6-2007.

8. The petitioner was allowed to enter the factory only on 3-11-2008 but after some hours he was placed under suspension.

9. Further per the petitioner the Labour Officer, Solan had never observed that the workers of the respondents were sitting idle and were not doing any work. In fact it was the management which did not allow the workers to work in the factory and had declared a lock-out,

which is clear from the statements of one Rakesh Chand Sharma, Production Supervisor and Shri Agya Ram, Security Supervisor of the company. The workers had also made a complaint to the Labour Commissioner, who had prohibited the lock-out declared by the company. The reference had been sent to the Labour Court *vide* Reference No. 58/2008 and the said reference had been partly up-held by the Hon'ble High Court and the company had agreed on a compromise and to pay a lump sum amount of 2,60,000/- and increase the salary by ₹ 7,672/-.

10. It is also averred by the petitioner that the enquiry officer has not conducted the enquiry fairly. No opportunity was afforded to the petitioner to defend his case. The petitioner was proceeded *ex-parte* by the enquiry officer on 26-6-2009 despite the fact that the petitioner had gone to see his ill mother at Chandigarh and due/proper intimation was given to the enquiry officer. The action of the respondent is stated to be illegal and the enquiry officer submitted *ex-parte* enquiry report to the respondent. The petitioner filed reply to the *ex-parte* enquiry report but the management did not consider the same. The enquiry, as per the petitioner, is totally unfair and violative of the principles of natural justice. The permission sought by the management to dismiss the petitioner on the basis of the aforesaid enquiry is also illegal and beyond the fore-corners of law. The punishment of dismissal is also stated to be disproportionate. The permission granted by the Labour Court to dismiss the services of the petitioner without deciding Reference No. 45/2008 is also not justified in the eyes of law.

11. The petitioner has denied that he has ever indulged in any sort of misconduct including threatening, assaulting, intimidating, insubordination, striking, instigating the workers to participate in a strike. As per the petitioner it was the management who had declared an illegal lock-out and for the said reason alone, the company had agreed to pay a lump-sum amount to the workers in Reference No. 58/2008. The charges leveled against the petitioner are false as none of the witnesses have supported the case of the management, as is clear from the statement of Shri Rakesh Sharma and Agya Ram Sharma.

12. The chargesheet dated 8-9-2008 does not talk about the incident dated 8-9-2008 and the chargesheet dated 8-9-2008 is stated to be an afterthought. The intention of the respondent company was mainly to victimize the union leaders including the petitioner.

13. It is thus the case of the petitioner that the action of the respondent management tantamount to unfair labour practice and the action of the respondent is violative of the provisions of Industrial Disputes Act and against the cardinal principles of natural justice. The petitioner is un-employed since 11-11-2008. It is thus prayed that the dismissal of the petitioner *w.e.f.* 5-4-2012 may be quashed and set aside. He may be reinstated in service with all consequential benefits. The suspension of the petitioner *w.e.f.* 11-11-2008 be also quashed and set aside and the petitioner be given full wages *w.e.f.* 5-4-2012 and the company be burdened with heavy damages amounting to ten lakhs.

14. While contesting the claim the respondents have *inter-alia* raised preliminary objections *vis-à-vis* maintainability and the petitioner having not approached this Court with clean hands. It is also averred that the reference is not maintainable as the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry in respect of misconduct levied *vide* chargesheets dated 8-9-2008 and 10-11-2008. The petitioner initially had participated in the proceedings but subsequently inspite of being aware of the enquiry proceedings and the date of the enquiry, intentionally and deliberately failed to attend in the enquiry proceedings and thus was proceeded *ex-parte.* Thereafter 2nd show cause notice along-with enquiry report was issued to the petitioner. The petitioner replied to the same, which was found unsatisfactory. Since, reference No. 58/2008 was pending adjudication an application under section 33(1) of the Act was moved to seek permission of the Court, which was granted *vide* order dated 31-3-2012. The punishment was stated to be commensurate with the misconduct of the petitioner.

15. On merits, it is the case of the respondents that the petitioner was issued chargesheets dated 8-9-2008 and 10-11-2008 and he was placed under suspension *w.e.f.* 31-11-2008 in terms of the provisions contained in the Certified Standing Orders of the respondent company. An enquiry in respect of the misconduct referred in the chargesheets was conducted against the petitioner in which he initially participated but subsequently inspite of being aware of the enquiry proceedings, intentionally and deliberately failed to attend the enquiry proceedings and thus was proceeded *ex-aprte.* The charges stand proved during the course of enquiry and thereupon permission was sought from the Labour Court under section 33 of the Act. He was eventually dismissed *w.e.f.* 5-4-2012. The action of the respondents is stated to be bonafide and as per the provisions of the Act and Certified Standing Orders of the respondent company. The respondents admitted that there was a union by the name and style of Gabriel Employees Union but the petitioner being elected General Secretary of the union is denied for want of knowledge.

16. The charges levied against the petitioner in the two chargesheets are stated to be correct and as per the respondent, stand duly proved during the course of the enquiry. Per the respondents on 8-7-2008, the petitioner with a view to coerce the management in withdrawing the termination orders of S/Shri Kulwant Kumar, Nirmal Singh and Parkash Singh along-with other workers resorted to sit in strike. The petitioner had threatened the General Manager to take back the said Kulwant Kumar into service, failing which the work in the factory would not be allowed. As per the respondent, the petitioner on the same date had instructed all the operators to stop working on the machines. The petitioner had also gone to the de-burring station and threatened the workers not to work. On account of such threats the work in the de-burring section also came to a halt. On 8-7-2008, too the petitioner and one Dwarka Nath, Arvind Singh, Girdhari Lal and Harvinder had stopped the work at the sinter line, leading to a strike.

17. It is further the case of the respondent that the petitioner was chargesheeted for misconduct under clauses 26-B(i) (ii) (iii), 26 XL LI, 26-B (viii), 26-B (vii), 26-B(i) and 26-B (LI) of the Certified Standings Orders of the respondent company for threatening, assaulting, intermediating, misbehaving with the officers in the factory premises, inciting, participating, intimidating and coercing the employees to strike and stop work. A chargesheet dated 10-11-2008 was also issued to the petitioner for the aforesaid misconduct. Per the respondents the chargesheets dated 8-9-2008 and 10-11-2008 were sent to the petitioner but he refused to receive the same and subsequently the same were sent to him through registered post. During the course of the enquiry the reply to the chargesheets were filed by the petitioner. It is denied that the copy of the chargesheets were not supplied to the petitioner. Per the respondents the procedure prescribed for disciplinary action under the Certified Standing Orders of the replying respondent was duly followed.

18. It is the case of the respondent management that the union had resorted to an illegal strike and the replying respondents had sent several communications to them to desist from the strike and to join duty but to no effect. The strike was prohibited by the Labour Commissioner and due intimation of the said was duly sent to the petitioner and the union, however, the workers did not resume duty. The workers had re-joined duty after giving an undertaking that they will work peacefully, maintain discipline and abide by the terms and conditions of the standing orders. The services of Kulwant Kumar, Nirmal Singh and Prakash were terminated in respect of submitting false and fabricated medi-claims.

19. Per the respondents the enquiry had been conducted as per the principles of natural justice and the Certified Standing Orders of the replying respondent. A fair hearing was afforded to the petitioner. Initially the petitioner had participated in the enquiry proceedings but subsequently he failed to attend the enquiry proceedings, hence, was proceeded *ex-parte.* The

enquiry officer had given a detailed and reasoned enquiry report. The enquiry report was also supplied to the petitioner with second show cause notice and a reply had been duly filed for the same by the petitioner. The rest of the contentions in the claim petition were denied. It is thus prayed that the petition be dismissed, being devoid of merits.

20. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

21. I notice that on 16-5-2014, the following preliminary issue came to be framed by my Learned Predecessor:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP.*

2. Relief

22. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:

Issue No. 1:	No. However, the punishment imposed by the disciplinary authority is disproportionate.
Relief:	Consequently, the reference is partly answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

23. A preliminary issue had come to be framed by my Learned Predecessor on 16-5-2014 as to whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice. The case propounded by the petitioner, however in brief was that the chargesheets dated 8-9-2008 and 10-11-2008 were not only false and baseless but were supplied to the petitioner only after the enquiry proceedings had commenced. It is also the case of the petitioner that the enquiry officer so appointed by the respondent management had fixed the enquiry on 22-05-2009 on which date the petitioner had appeared before the enquiry officer. He came to know about the chargesheets on 22-05-2009 only.

24. It is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry fairly. The petitioner had not been afforded proper opportunity to defend his case. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner initially participated in the enquiry but subsequently he did not appear before the enquiry officer as he had to go to Chandigarh in order to see his ailing mother information of which was also sent by him to the enquiry officer but he was proceeded *ex-parte* by the enquiry officer. The petitioner had to take his ailing mother to PGI on 26-6-2009. The fact was duly conveyed to the respondent and the enquiry officer orally. The enquiry officer thereupon never informed the petitioner about the proceedings, though he was representing the other workers as a defence assistant. The documents have not been supplied to the petitioner. The enquiry officer had not recorded any reasons to substantiate his findings. The enquiry conducted by the enquiry officer was thus stated to be totally unfair and against the

principles of natural justice and the punishment of dismissal was also stated to be disproportionate.

25. On the allegations made in the two chargesheets the petitioner denied having instigated or coerced the workers from resorting to stoppage of work or threatening, assaulting, intermediating, misbehaving or inciting the employees to go on strike on 8-7-2008 and 9-7-2008. As per the petitioner the intention of the respondent company was to victimize the union leaders including the petitioner and to terminate them from service.

26. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. Initially the petitioner had duly participated in the proceedings but subsequently he failed to attend the enquiry proceedings inspite of being aware of the same. During the course of enquiry the petitioner had filed reply to the chargesheets. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

27. The petitioner while appearing as his own witness as PW-1 has reiterated the averments made in the statement of claim. He has placed on record the affidavits of S/Shri Rakesh Chand and Agya Ram mark X and Y respectively, the copies of increments given by the respondent company *vide* Ex. PW-1/A to Ex. PW-1/N and copy of demand notice Ex. PW-1/O.

28. In his cross-examination the petitioner has denied that the chargesheet Ex. RX-1 was given to him. He however admits that he received chargesheet Ex. RA along-with its Hindi translation *vide* Ex. RA-1 during the course of the enquiry. He further admits that he filed reply Ex. RA/2. He had also been supplied the Certified Standing Orders Ex. R-1/3.

29. It further transpires from his testimony that the petitioner had appeared before the enquiry officer on 22-05-2009 and the enquiry officer had given him the chargesheet dated 8-9-2008 along-with documents. He also admits his signatures on the proceedings dated 22-5-2009 Ex/ R-A/6. He has also admits that thereafter he appeared before the enquiry officer on 26-5-2009 on which date the enquiry officer had given him time to file reply to chargesheet dated 8-9-2008. He further admits to have appeared before the enquiry officer on 11-6-20109, 18-6-2009. He also admits that he failed to appear before the enquiry officer on 26-6-2009. He however denied that he intentionally did not appear before the enquiry officer on 26-6-2009.

30. It further transpires from the testimony of the petitioner that the respondent company had issued a letter dated 23-7-2009 along-with enquiry report (Ex. RW2/D-3) through registered post. The petitioner has also admitted that he has filed reply to the same *vide* Ex. RA-10.

31. The petitioner further examined two witnesses namely S/Shri Rakesh Chand (PW-3) and Agya Ram (PW-4) to portray that on 8-7-2008 the petitioner and the other union members had never resorted to a sit-in-strike on that date and the allegations against the petitioner and other workers are false and they had submitted affidavits Ex. PW-3/A, PW-3/B and Ex. PW-4/A respectively, contents of which are totally correct.

32. The respondents on the other hand have examined Shri Balwinder Singh, Coordinator HR as RW-1 who has reiterated the averments made in the reply in his affidavit Ex. RW-1/A. Apart from other documents he has placed on record the enquiry report pertaining to

three workers S/Shri Kulwant Kumar, Prakash Singh and Nirmal Singh, because of whose termination the petitioner and the workers had stopped work. The said witness was also the presenting officer or the management representative before the enquiry officer. In his cross-examination he has admitted that the petitioner was the General Secretary of the union and his conduct during his entire service was good. He has admitted that the workers union had given an application before the Certifying Officer to increase the retirement age of workers from 55 years to 60 years in the year 1998 and the matter went up till the Hon'ble Supreme Court and was eventually decided in favour of the workers.

33. The respondents have also examined the enquiry officer Shri V. K. Gupta as RW-2. Per him he had intimated the date of enquiry to the petitioner and on 22-05-2009 the petitioner was present. Thereafter the enquiry was fixed on 26-5-2009 as the petitioner wanted to file reply to the chargesheets dated 8-9-2008 and 10-11-2008 but on the next date of hearing *i.e.* 11-6-20098, the petitioner failed to file any reply and the enquiry was fixed for 18-6-2009 on which date the petitioner filed reply to the chargesheet. Then the enquiry was fixed for 26-6-2009 on which date the petitioner was not present nor he had sent any intimation. Since the petitioner was aware about the next date, he was proceeded *ex-parte* and the enquiry was fixed for 27-6-2009 for ex-parte evidence of the respondent on which date the statements of management witnesses were recorded and the enquiry proceeding was concluded. The petitioner did not appear on 27-6-2009. As per this witness due opportunity was afforded to the petitioner to put forth. The petitioner never objected to the witness being appointed as an enquiry officer. The enquiry has been done in a just fair and impartial manner.

34. The witness has denied that he had not explained the procedure to be adopted in the enquiry. Per this witness the petitioner had never asked for the services of a defence assistant. He has admitted that his father was a labour law advisor of Gabriel India Ltd. Per this witness the petitioner had been proceeded *ex-parte* on 26-6-2009. He denied that the petitioner had informed him telephonically and through Dwarka Nath that he will not be in a position to attend the enquiry as he had gone to PGI Chandigarh for treatment of his wife.

35. The respondent management has literally placed on record the entire proceedings of the enquiry starting from Ex. RA/6 to Ex. RA/9 and Ex. RW-2/D-1, Ex. RW-2/D- 2 and upto Ex. RW-1/N. So much so even the day- to- day proceedings to conducted by the enquiry officer have been placed on recorded starting from 22-05-2009 till 18-6-2009. The respondents have also placed the copy of Certified Standing Orders Ex. RA/3 and the permission granted by this Court for dismissing the services of the respondent Ex. RW1/G.

36. Much was urged by the learned counsel for the petitioner that the petitioner was placed under suspension for the charges referred in letter dated 08-09-2008 but enquiry was conducted in respect of the charges not only relating to the letter dated 08-09-2008 but also those reflected in the letter dated 8-9-2008. The copy of the chargesheet was never supplied to the petitioner. It was only on 22-05-2009 that the chargesheet was supplied to the petitioner for the first time. The enquiry officer too did not explain the procedure to be adopted. He did not allow the services of defence assistant to the petitioner. Not only this, the enquiry officer had wrongly proceeded the petitioner *ex-parte* despite the fact that he had gone to PGI Chandigarh for the check-up of his mother and the intimation of the same was duly given by the petitioner to enquiry officer. He would further contend that there was totally non application of mind and even while recording the reasons in support of his findings the enquiry officer had not given any reasons whatsoever.

37. Per contra it is the contention of the learned counsel for the respondent that the petitioner was afforded all possible opportunity to put his case. Initially he had appeared in the

proceedings but later on he failed to participate in the domestic enquiry despite the fact that he was well aware about the initiation of enquiry proceedings, hence, he was rightly proceeded *ex-parte* by the enquiry officer. Thereafter the management witnesses had been examined. The petitioner being the General Secretary of the union was not a novice and as such no prejudice has been caused to him. The enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

38. The conjoint reading of the deposition of the parties and the overwhelming documentary evidence on record, does show that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. A presumption in law thus does arise that the copy of the chargesheet apparently had been sent to the petitioner but he refused to receive the same. The same is not disputed. In fact the petitioner had filed reply to the same. The proceedings of the enquiry starting from 22-05-2009 to 27-06-2009 does show that the petitioner had appeared on each and every day when effective orders were passed. His signatures bears testimony to the said fact. The testimony of RW-2 is duly corroborated by the documentary evidence placed on record *vide* Ex. RW-2/D-1 to Ex. RW-2/D-4 and Ex. RA-5.

39. The proceedings dated 26-6-2009 Ex. RW-2/D-1 shows that the petitioner was not present on that date. He did not even appear before the enquiry officer on 27-6-2009. To counter the proceedings dated 26-6-2009 (Ex. RW-2/D-1) no evidence has even led by the petitioner, except for his bald assertion. However, he could have joined the proceedings again on 27-6-2009. It was not done. No application for the setting aside the *ex-parte* proceedings have been made. Moreover the petitioner had been appearing as a defence assistant of other workers and that too in respect of literally the same set of allegations. It thus seems that he voluntarily refused to appear after 26-6-2009. The enquiry officer rightly proceeded with the enquiry thereafter.

40. The learned counsel for the petitioner thus further contend that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orisa titled as Management **of State Bank of India** Vs. **Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151.** It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an objection has been raised by the presenting officer *vis-a-vis* its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

41. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the Advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmahal Hotel** Vs. **Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd.** Vs. **Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union** Vs. **Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also *ipso facto* does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry

officer and as held in **H.V Nirmala** Vs. **Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 *ipso facto* is not sufficient to vitiate the entire enquiry.

42. Till the recording of the findings is concerned reasonable opportunity has been afforded to the petitioner and so have been the principles of natural justice been followed. The initiation of chargesheet and proving the allegations therein have been done in a manner which are in consonance with the provisions of Certified Standing Orders of the respondent company as reflected in Ex. RA/3. The principles of natural justice also have seemingly been complied. As discussed above nothing much was elicited from the documents or the evidence on record to impeach the veracity of the proceedings *vis-à-vis* grant of fair opportunity and the non-compliance of the principles of natural justice. The enquiry proceedings, however culminate with the imposition of penalty holding a person guilty and by way of filling of enquiry report is the first right. The second right however to plead for either no penalty or lesser penalty or even in the conclusion that the guilt stand accepted. This second right is exercisable at the second stage and the second stage consists of the issuance of notice to show cause against the proposed penalty and considering the reply to the notice and deciding upon the penalty.

43. The consideration of the findings recorded by an enquiry officer form an important and material stand before the disciplinary authority. It is incumbent upon the disciplinary authority to consider the report of the enquiry officer and the conclusion reached by him. If such a finding is to be one of the document to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is indeed a negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like an enquiry officer without giving the employee an opportunity to reply to it. As such the disciplinary authority is required to consider the evidence, report of the enquiry officer and the representation of the employee against it before imposing penalty, higher penalty would be the onus of this count. The case in hand pertains to dismissal.

44. Having said so, the perusal of the judgment titled as **Associate Cement Company Ltd.** Vs. **T.C Shrivastva and others 1984 (Supp.) SCC 87**, however shows that unless the Certified Standing Orders provide for a 2nd show cause notice on the proposed punishment is not a condition precedent for imposing punishment. As per the judgment no enquiry which is otherwise fair and valid will be vitiated by non-offering of such second opportunity.

45. While testing the factual back-ground in the back-ground of the principles set out hereinabove it transpires that the respondent had on 26th August, 2009 *vide* Mark-RX-3 sent written communication to the petitioner seeking comments, if any, on the findings of the enquiry officer. The enquiry report Ex. RW2/D-3 had also been sent along-with.

46. Looking at the Certified Standing Orders of the respondent company, which has been placed on record as Ex.R-A/3, the procedure for disciplinary action has been enunciated in para 26 which reads as follows:

"26. Procedure for disciplinary action:

Where the allegation of misconduct against any worker is reported or otherwise come to the notice of the management/manager a chargesheet in writing specifying the substance of allegations shall be given to the workman concerned requiring him to submit his written explanation within stipulated time which shall not be less than 48 hours. If an "workman refuses to receive the charge sheet, at least in the presence of any other workman, a copy of the chargesheet shall be sent to him by registered post under postal certificate and copy exhibited on the Notice Board. This shall be treated as sufficient evidence of the chargesheet having been served on the delinquent employee.

If the employee fails to submit his explanation within stipulated time, without any sufficient cause being shown, it will be presumed that he has no explanation to offer and action will proceed in the absence of any explanation. On receipt of the explanation, if it is found to be satisfactorily, the matter will be closed, otherwise a regular domestic enquiry will be held by the Manager or his nominee, wherein the workman shall be given reasonable opportunity to defend himself. The management/manager shall be fully competent to appoint any other outsider as an enquiry officer if they so like. The delinquent workman shall be allowed to be represented assisted by any co-worker employed in the factory or representative as per section 36 of the Industrial Disputes Act, 1947. The charge sheeted employee shall be bound to present himself before the enquiry officer personally. If he fails to do so on the first appointed date, the enquiry officer may adjourn the proceedings to give him sufficient opportunity or may proceed *ex-parte* at this discretion. In case an employee does not present on the adjourned date, it will be a sufficient reason for the enquiry officer to presume that the delinquent employee was deliberately avoiding the participation in the enquiry and to proceed *ex-parte*."

Para 27-A of the Standing Orders further provide the punishment which may be awarded to a workman and the same reads as follow:

27-A depending upon the severity of the misconduct, the punishment awarded to a workman may be any of the following:

1. Dismissal
2. Discharge
3. Suspension
4. Warning/Censure
5. Stoppage of annual increment not exceeding two increments
6. Demotion to the next lower grade

47. The reading of para 27-A shows that it does not provide for a second opportunity to be granted to the delinquent. No requirement has been envisaged in the standing orders to giving the delinquent any opportunity to offer any explanation. In the case in hand the respondents had afforded opportunity to the petitioner to offer comments in respect of the findings recorded by the enquiry officer within five days and the copy of the enquiry report Ex. RW2/D-3 had also been supplied along-with.

48. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Associate Cement Company Ltd. *Vs.* T.C Shrivastva and others discussed hereinabove *supra,* it is clear that the plain reading of the standing orders read as a whole does not warrant an assumption that second show cause notice had to be issued to the petitioner. It cannot thus be said that the enquiry was even vitiated on this count too.

49. For all the reasons detailed hereinabove this Court is constrained to hold that the departmental enquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice much less prejudice de-facto. In the case in hand the petitioner has failed to prove the violation of the mandatory and statutory Rules which would have tantamounted to prejudice. The infringement of Rules which are merely directory in nature the element of de-facto prejudice had to be pleaded and shown, which has not been done in the case in hand. The onus was on the petitioner to have shown the grounds resulting in de-facto prejudice and that he had been put to a disadvantage thereof, which has not been done. In this behalf support can be ably drawn from the judgment of Hon'ble Supreme Court titled as **Union of India** Vs. **Alok Kumar (2010) 5 SCC 349.**

50. However, the standing orders of the respondent company Ex. R-A/3 though totally silent on the issuance of a 2nd show cause notice does talk of the action to be taken by a disciplinary authority in case of sexual harassment but not relating to imposition of major penalty, like dismissal from service. However, Rule 27-A of the standing orders provide for punishments ranging from dismissal to censure and stoppage of increments. Even, if the respondent was not obligated to issue a show cause for the proposed punishment, the respondent management was duty bound to have considered the nature of charges and its gravity, particularly keeping in view the fact that no past misconduct has been relied upon by the respondent/company. These facts had to be taken into consideration by the disciplinary authority. To this limited extent the breach of principles of natural justice was itself a prejudice and no other "de-facto" prejudice was required to be proved.

51. The gravamen of the allegation in the chargesheet are that the petitioner and the other workmen had on 8-7-2008 and 9-7-2008 gheraoed the General Manager and stopped workers from working on the machines at the production unit and threatened them with dire consequences in case they did not stop work. Admittedly, the petitioner was the General Secretary of the union and the other workmen who have been dismissed were also the leaders of the union. The witnesses of the management examined by the enquiry officer *i.e.* MW-1 D.K. Sharma D.G.M, MW-2 Neeraj Gupta, G.M Manufacturing, and MW-3/1 Deep Ram, Assistant Manager, Production have stated that certain workmen had come and stopped work in the de-burring section and the sinter line. Though, undoubtedly all the witnesses have deposed that the petitioner was leading the workers, but the fact remains that admittedly he was also the president of the union. Except from the threat of lying prostrate on the machines nothing else has been attributed to the workmen. There is no evidence that any collateral damage was done to the machines or the factory. All the witnesses have admitted that there was a strike/lock-out in the factory and the workers had resumed the work only after the Labour Commissioner had passed an order to this effect. Even as per the affidavit filed by RW-1 Shri Balwinder Singh, HR Coordinator there was strike at 10.00 A.M. on 8-7-2008. Per him the strike continued from 8-7-2008 till 30-7-2008. The strike had been prohibited by the Labour Commissioner on 31-7-2008 and the workers had resumed duties only thereafter.

52. It is thus clear that whatever had happened on 8-7-2008 and 9-7-2008 was apparently in view of the dispute having arisen between the management and the workers union. Oblivious of the fact that no notice was required to be issued to the petitioner and other workmen as per the Standing Orders before dismissing them, it was still incumbent upon the disciplinary authority to

have taken into consideration the gravity of the misconduct, the previous record of the workmen and any other extenuating or aggravating circumstance at the time of the passing of the order of dismissal. RW-1 Shri Balwinder Singh who is not only the HR Coordinator but also the presenting officer has admitted that the conduct of the petitioner was good throughout. Moreover, the respondent had not notified to the petitioner or the other workmen anything about his past record in the show cause notice. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

53. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra** Vs. **State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd.** Vs. **Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

54. The facts narrated and discussed hereinabove clearly show that not only have the witnesses only partially supported the case of the workman in the enquiry proceedings but even the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. The factum that the strike had already ensued on 8-7-2008 itself, and the workers were the President and the office bearers of the union did not also weigh with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

55. Thus while holding that the respondents have conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove *supra,* has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove, in such a situation with holding of two increments with cumulative effect will be more than adequate punishment for such an employee. The issue is decided accordingly.

Relief :

As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today this 23rd day of April, 2019.

CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 18 of 2013

Instituted on 24-4-2013

Decided on 23-4-2019

Girdhari Lal s/o Shri Gita Ram r/o House No-1429, Kamla Nagar, Kalka, District Panchkula, Haryana. . .*Petitioner.*

Versus

1. M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. through its General Manager.

2. The Factory Manager, M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

ORDER/AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of services of Shri Girdhari Lal s/o Shri Jita Ram, r/o House No.1429, Kamla Nagar, Kalka, District Panchkula, Haryana. w.e.f. 5-4-2012 by the management of M/s Federal Mogul Bearing India Ltd., Plot No. 5 Sector-2, Parwanoo, District Solan, H.P. after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement in service, back-wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In pursuance to the aforesaid reference, it is the pleaded case of the petitioner in the statement of claim that he came to be appointed as an operator on 01-10-1984 and worked as such till 3-11-2008. The petitioner came to be placed under suspension *w.e.f.* 3-11-2008 and was eventually dismissed *w.e.f.* 5-4-2012 on false allegations and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). The dismissal letter was given to the petitioner on 7-4-2012.

3. The work and conduct of the petitioner was always upto the mark. He was the elected Joint Secretary of the workers union.

4. It is further the averred case of the petitioner that the allegations leveled against him *vide* chargesheets dated 28-7-2008 and 8-9-2008 were totally false and baseless. The chargesheets were supplied to the petitioner only after the enquiry proceedings had started. Initially the company had leveled false allegations against certain persons *vide* a letter dated 9-7-2008. The names of some of the persons were deleted and those of the petitioner and other union leaders were retained just to create pressure upon them to compromise/withdraw the cases filed against the company. The workers had filed applications for increasing the retirement age from 55 years to 60 years. The company had filed SLP No. 9163/2008 before the Hon'ble Supreme Court of India, which was pending adjudication and the chargesheet thus had been issued to the petitioner and other union leaders to create pressure upon them to compromise the matter.

5. It is further the case of the petitioner that the enquiry officer Shri V. K. Gupta had fixed the enquiry on 15-11-2008 and no information had been given to the petitioner. He was only informed about the enquiry fixed on 15-11-2008. It is only on that date the petitioner came to know about the chargesheet dated 28-7-2008 and 8-9-2008. It was on the asking of the enquiry officer that the respondent had supplied the two chargesheets to the petitioner on 15-11-2008, which is stated to be totally illegal and against the basic principles of natural justice.

6. It is also the averred case of the petitioner that he never instructed any operator to stop working on the machines on 8-7-2008. The operators had never sat idle. The petitioner never went to the de-burring station and never threatened any worker to stop work. The petitioner has even denied that on 9-7-2008, he and other co-workers namely S/Shri Dwarka Nath, Arvind Singh and Harvinder had gheraoed the General Manager Operation-*cum*-Factory Manager and Dy. GM manufacturing and never distracted the staff members from operating the machines. The entire allegations in this behalf leveled by the management were stated to be baseless and just to harass and terminate the services of the petitioner.

7. It is also the averred case of the petitioner that an earlier domestic enquiry against Kulwant Kumar, Nirmal Singh and Prakash for submitting false medical claim was also unfair, improper and against the basic principles of natural justice. They had been dismissed from service illegally and without any credible proof. The workers union had never resorted to any strike on 8-7-2008 against their dismissal. The workers had requested the company to allow them to work in the factory. The workers were not allowed to work in the company *w.e.f.* 14-7-2008 to 31-10-2008. It is only on the intervention of the Labour Commissioner that the workers were allowed to resume the work. The dismissal of the three workers was also stated to be in violation of clause 17(3) of a settlement dated 2-6-2007.

8. The petitioner was allowed to enter the factory only on 3-11-2008 but after some hours he was placed under suspension.

9. Further per the petitioner the Labour Officer, Solan had never observed that the workers of the respondents were sitting idle and were not doing any work. In fact it was the management which did not allow the workers to work in the factory and had declared a lock-out, which is clear from the statements of one Rakesh Chand Sharma, Production Supervisor and Shri Agya Ram, Security Supervisor of the company. The workers had also made a complaint to the Labour Commissioner, who had prohibited the lock-out declared by the company. The reference had been sent to the Labour Court *vide* Reference No. 58/2008 and the said reference had been partly up-held by the Hon'ble High Court and the company had agreed on a compromise and to pay a lump-sum amount of 2,60,000/- and increase the salary by ₹ 7,672/-.

10. It is also averred by the petitioner that the enquiry officer has not conducted the enquiry fairly. No opportunity was afforded to the petitioner to defend his case. The enquiry was started on 1-11-2008 *i.e.* prior to the suspension of the petitioner and that too without intimation to him. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The enquiry officer chose not to write the exact words said by the witnesses. The enquiry officer has not given any reason for his findings. He had not supplied certain documents sought by the petitioner. The enquiry, as per the petitioner, is totally unfair and violative of the principles of natural justice. The permission sought by the management to dismiss the petitioner on the basis of the aforesaid enquiry is also illegal and beyond the fore-corners of law. The punishment of dismissal is also stated to be disproportionate. The permission granted by the Labour Court to dismiss the services of the petitioner without deciding Reference no. 45/2008 is also not justified in the eyes of law.

11. The petitioner has denied that he has ever indulged in any sort of misconduct including threatening, assaulting, intimidating, insubordination, striking, instigating the workers to participate in a strike. As per the petitioner it was the management who had declared an illegal lock-out and for the said reason alone, the company had agreed to pay a lump sum amount to the workers in Reference No. 58 / 2008. The charges leveled against the petitioner are false as none of the witnesses have supported the case of the management, as is clear from the statement of Shri Rakesh Sharma and Agya Ram Sharma.

12. The chargesheet dated 28-7-2008 does not talk about the incident dated 8-7-2008 and the chargesheet dated 8-9-2008 is stated to be an afterthought. The intention of the respondent company was mainly to victimize the union leaders including the petitioner.

13. It is thus the case of the petitioner that the action of the respondent management tantamount to unfair labour practice and the action of the respondent is violative of the provisions of Industrial Disputes Act and against the cardinal principles of natural justice. The petitioner is un-employed since 3-11-2008. It is thus prayed that the dismissal of the petitioner *w.e.f.* 5-4-2012 may be quashed and set aside. He may be reinstated in service with all consequential benefits. The suspension of the petitioner *w.e.f.* 3-11-2008 be also quashed and set aside and the petitioner be given full wages *w.e.f.* 3-11-2008 and the company be burdened with heavy damages amounting to ten lakhs.

14. While contesting the claim the respondents have *inter-alia* raised preliminary objections vis-à-vis maintainability and the petitioner having not approached this Court with clean hands. It is also averred that the reference is not maintainable as the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. Since, Reference No. 58/2008 was pending adjudication an application under section 33(1) of the Act was moved to seek permission of the Court, which was granted *vide* order dated 31-3-2012. The punishment was stated to be commensurate with the misconduct of the petitioner.

15. On merits, it is the case of the respondents that the petitioner was issued chargesheets dated 28-7-2008 and 8-9-2008 and he was placed under suspension *w.e.f.* 1-11-2008 in terms of the provisions contained in the Certified Standing Orders of the respondent company. An enquiry in respect of the misconduct referred in the chargesheets was conducted against the petitioner in which he duly participated. The charges stand proved during the course of enquiry

and thereupon permission was sought from the Labour Court under section 33 of the Act. He was eventually dismissed *w.e.f.* 5-4-2012. The action of the respondents is stated to be bonafide and as per the provisions of the Act and Certified Standing Orders of the respondent company. The respondents admitted that there was a union by the name and style of Gabriel Employees Union but the petitioner being elected Vice President of the union is denied for want of knowledge.

16. The charges levied against the petitioner in the two chargesheets are stated to be correct and as per the respondent, stand duly proved during the course of the enquiry. Per the respondents on 8-7-2008, the petitioner had questioned the General Manager Operations-*cum*-Factory Manager as to why the services of Kulwant Kumar had been terminated. The petitioner had threatened the General Manager to take back the said Kulwant Kumar into service, failing which the work in the factory would not be allowed. As per the respondent, the petitioner on the same date had instructed all the operators to stop working on the machines. The petitioner had also gone to the de-burring station and threatened the workers not to work. On account of such threats the work in the de-burring section also came to a halt. On 9-7-2008, too the petitioner and one Dwarka Nath, Arvind Singh, Girdhari Lal and Harvinder had stopped the work at the sinter line, leading to a strike.

17. It is further the case of the respondent that the petitioner was chargesheeted for misconduct under clauses 26-B(xvii), 26-B(iii) and 26-B (Li) of the Certified Standings Orders of the respondent company for threatening, assaulting, intermediating, misbehaving with the officers in the factory premises, inciting, participating, intimidating and coercing the employees to strike and stop work. Per the respondents the chargesheets dated 28-7-2008 and 8-9-2008 were sent to the petitioner but he refused to receive the same. He failed to file reply. During the course of the enquiry the reply to the chargesheets were filed by the petitioner. It is denied that the copy of the chargesheets were not supplied to the petitioner. Per the respondents, he refused to receive the chargesheets. The enquiry officer was appointed vide letter dated 18-10-2008 and during the course of enquiry the chargesheets were duly provided to the petitioner and he filed the reply to the same. Per the respondents the procedure prescribed for disciplinary action under the Certified Standing Orders of the replying respondent was duly followed.

18. It is the case of the respondent management that the union had resorted to an illegal strike and the replying respondents had sent several communications to them to desist from the strike and to join duty but to no effect. The strike was prohibited by the Labour Commissioner and due intimation of the said was duly sent to the petitioner and the union, however, the workers did not resume duty. The workers had re-joined duty after giving an undertaking that they will work peacefully, maintain discipline and abide by the terms and conditions of the standing orders. The services of Kulwant Kumar, Nirmal Singh and Prakash were terminated in respect of submitting false and fabricated medi-claims.

19. Per the respondents the enquiry had been conducted as per the principles of natural justice and the Certified Standing Orders of the replying respondent. A fair hearing was afforded to the petitioner. The petitioner cross-examined the management witnesses and also examined his witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copy of day-to-day proceedings of the enquiry. The enquiry officer had given a detailed and reasoned enquiry report. The enquiry report was also supplied to the petitioner with second show cause notice and a reply had been duly filed for the same by the petitioner. The rest of the contentions in the claim petition were denied. It is thus prayed that the petition be dismissed, being devoid of merits.

20. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

21. I notice that on 16-5-2014, the following preliminary issue came to be framed by my Learned Predecessor:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP.*

2. Relief

22. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:

Issue No. 1 : No. However, the punishment imposed by the disciplinary authority is disproportionate.

Relief: Consequently, the reference is partly answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1 :

24. A preliminary issue had come to be framed by my Learned Predecessor on 16-5-2014 as to whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice. The case propounded by the petitioner, however in brief was that the chargesheets dated 28-7-2008 and 8-9-2008 were not only false and baseless but were supplied to the petitioner only after the enquiry proceedings had commenced. It is also the case of the petitioner that the enquiry officer so appointed by the respondent management had fixed the enquiry on 1-11-2008 and information had been given to the petitioner. He was only informed about the enquiry on 15-11-2008. He came to know about the chargesheets after 15-11-2008 only.

25. It is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry fairly. The petitioner had not been afforded proper opportunity to defend his case. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The documents have been not been supplied to the petitioner. The enquiry officer chose not to write the exact words of the witnesses. The enquiry officer had not recorded any reasons to substantiate his findings. The enquiry conducted by the enquiry officer was thus stated to be totally unfair and against the principles of natural justice and the punishment of dismissal was also stated to be disproportionate.

26. On the allegations made in the two chargesheets the petitioner denied having instigated or coerced the workers from resorting to stoppage of work or threatening, assaulting, intermediating, misbehaving or inciting the employees to go on strike on 8-7-2008 and 9-7-2008. As per the petitioner the intention of the respondent company was to victimize the union leaders including the petitioner and to terminate them from service.

27. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner

has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. The chargesheets have been duly sent to the petitioner but he refused to receive the same. During the course of enquiry the petitioner had filed reply to the chargesheets. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The petitioner cross-examined the management witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copies of day to day proceedings of the enquiry. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

28. The petitioner while appearing as his own witness as PW-2 has reiterated the averments made in the statement of claim. He has placed on record the letter of dismissal dated 5-4-2012 *vide* Ex. P-1 and various letters granting him increments and appreciations *vide* Ex. P-3 to Ex. P-12. Suspension letter Ex.P-13, copy of the affidavit filed by Shri Rakesh Chand Sharma and Agya Ram Sharma as Mark. P-X, Mark PX-1 and Mark. PX-2 respectively. He has also placed on record order dated 18-12-12 passed by the Hon'ble High Court in CWP No. 4175/2012 Ex. P-14**.**

29. In his cross-examination the petitioner has denied that the chargesheet Ex. RX-1 was sent to him on his residential address prior to the inquiry. He however admit that the same was supplied to him on 15-11-2008 and he had filed reply to the same *vide* Ex. RX-5.

30. It further transpires from his testimony that the petitioner had appeared before the enquiry officer on 15-11-2008**,** though he was not present on the first day *i.e.* on 1-11-2008. The petitioner has himself admitted that he was supplied the chargesheets and its Hindi version for the first time on 15-11-2008. He has also admitted his signatures on the enquiry proceedings of 15-11-2008. Again a chargesheet along-with Hindi translations were again supplied to the petitioner apparently the earlier copies were not legible. On 05-2-2009, the statement of witnesses of the management were supplied to the petitioner. He has also admitted that on the objection of the management representative the enquiry officer had asked him to show the relevancy of the documents demanded by him. The co-worker of the petitioner Shri Haider Ali started representing the petitioner in the enquiry and he even cross-examined the witnesses of the management, on 28-7-2009. He admits that the cross-examination of the management witnesses bears his signatures and those of the co-worker Shri Haider Ali. He had also submitted written arguments *vide* Ex.RX-6.

31. He has also admitted in his deposition that he had filed the statement of his witnesses S/Shri Rakesh Chand and Agya Ram. The petitioner had been admittedly cross-examined on 25-5-2009 and the same bear his signature.

32. It further transpires from the testimony of the petitioner that the respondent company had issued a letter dated 23-07-2009 *vide* Ex. RX-8 along-with enquiry report (Ex. RW2/A-21). The petitioner has also admitted that he has filed reply to the same *vide* Ex. RX-9.

33. The petitioner has also examined one Shri Haider Ali as PW-1. The said witness was the defence assistant/co-worker in the enquiry of the petitioner. Per him the enquiry officer had not explained any procedure to him at the beginning of the enquiry. The enquiry officer did not record the questions put by the defence assistant. He used to write the answer as per his choice. Per this witness the documents demanded by him from the management were also not supplied to him. Certain questions put by him were dis-allowed by the enquiry officer. Per the witness the enquiry was not conducted in a proper and fair manner and the enquiry officer had

not followed the principles of natural justice. It is however admitted by the witness that he appeared in the enquiry proceedings for the first time on 02-5-2009. He has admitted cross-examining the witnesses of the management. The questions which were disallowed are already stated to have been recorded in the enquiry proceedings. The witness has admitted that no application in writing was filed by him regarding the disallowing of the questions. He has also admitted that the petitioner had examined his defence witnesses and even the petitioner was cross-examined on 25-5-2009. He has admitted that written arguments were submitted to the enquiry officer on 6-6-2009. He has also admitted that the copies of the day to day enquiry proceedings and the statement of all witnesses were supplied to them and the entire enquiry proceedings were recorded in his presence.

34. The petitioner further examined two witnesses namely S/Shri Birbal Singh (PW-5), Ms. Sumera Jhon (PW-6) and Agya Ram to portray that on 8-7-2008/9-7-2008, the petitioner and the other union members had not stopped any other worker from doing their work in the factory or the sinter line.

35. The petitioner has further examined one Shri Rakesh Chand, Operator (PW-3), Shri Agya Ram, Operator (PW-4), to contend that they had filed statements before this Court and the petitioner and other workers had never threatened any worker to stop the work *vide* Ex.PW-3/A, Ex.PW-3/B and Ex. PW-4/A respectively. The allegations against them were totally false. Even on 9.7.2008, the petitioner and other workers never led a mob of workers in sinter line department and did not Gherao the General Manager.

36. The respondents on the other hand have examined Shri Balwinder Singh, Co-ordinator HR as RW-1 who has reiterated the averments made in the reply in his affidavit Ex. RW-1/A. Apart from other documents he has placed on record the enquiry report pertaining to three workers S/Shri Kulwant Kumar, Prakash Singh and Nirmal Singh, because of whose termination the petitioner and the workers had stopped work. The said witness was also the presenting officer or the management representative before the enquiry officer. In his cross-examination he has admitted that the petitioner was the Joint Secretary of the union and his conduct during his entire service was good. He has admitted that the workers union had given an application before the Certifying Officer to increase the retirement age of workers from 55 years to 60 years in the year 1998 and the matter went up till the Hon'ble Supreme Court and was eventually decided in favour of the workers.

37. The respondents have also examined the enquiry officer Shri V. K. Gupta as RW-2. Per him he had intimated the date of enquiry to the petitioner *vide* registered letter dated 21-10-2008. The petitioner was not present on that day as such letter dated 1-11-2008 was issued to the petitioner intimating him the next date as 15-11-2008. On 15-11-2008 the petitioner was present. The chargesheets dated 28-7-2008 and 8-9-2008 along-with documents were handed over to the petitioner. The management was asked to submit additional documents, if any, along-with the list of witnesses on the next day *i.e.* 24-11-2008. On that day the petitioner has sought legible copies of chargesheets which were duly given to him along-with Hindi translations. On 15-12-2008 the enquiry was adjourned at the request of the petitioner. On 16-1-2009 the petitioner had prayed that the enquiry proceedings be deferred in view of the Reference Nos. 45/2008 and 58/2008. The petitioner was asked to provide the copy of the stay order. However, he could not produce the same. Certain documents were filed by the presenting officer, copies of the same were also supplied to the petitioner. The petitioner requested for a date for cross-examination. On 3-4-2009 the petitioner asked for certain documents, the relevancy which were objected to by the presenting officer. Eventually on 11-5-2009 for the first time co-worker of the petitioner namely Shri Haider Ali appeared and the witnesses of the management were cross-examined. The list of questions which were disallowed in the cross-examination of MW-3 were

marked**.** The day- to- day proceedings were duly signed by the petitioner, co-worker and the presenting officer. On 21-5-2009 the statement of the petitioner was recorded. The other witnesses of the management were also examined. The written submissions were submitted by the petitioner and enquiry proceedings dated 25-6-2009 was given to the petitioner. As per his witness due opportunity was afforded to the petitioner to put forth his case and cross-examine the witnesses of the management. The petitioner never objected to the witness being appointed as an enquiry officer. The enquiry has been done in a just fair and impartial manner.

38. The witness has denied that he had not explained the procedure to be adopted in the enquiry, though he admitted that he had not mentioned the same in the enquiry proceedings. He has admitted that there is no reference regarding providing the services of a defence assistant to the petitioner *w.e.f.* 15-11-2008 to 30-6-2009. Per this witness the petitioner had never asked for the services of a defence assistant. He has admitted that his father was a labour law advisor of Gabriel India Ltd. Per this witness he had only disallowed irrelevant questions and he had also recorded the reasons for disallowing the questions. He has admitted that for certain questions the reasons for disallowance has not been written.

39. The respondent management has literally placed on record the entire proceedings of the enquiry starting from chargesheet Mark RX-1 to the enquiry report Ex. RW- 2/A-21. So much so even the day-to-day proceedings conducted by the enquiry officer have been placed on record starting from 15-11-2008 till 30-6-2009.The respondents have also placed on record the Certified Standing Orders Ex. RX-13 and placed on record the permission granted by this Court for dismissing the services of the respondent Ex. RX-11.

40. Much was urged by the learned counsel for the petitioner that the petitioner was placed under suspension for the charges referred in letter dated 28-7-2008 but enquiry was conducted in respect of the charges not only relating to the letter dated 28-7-2008 but also those reflected in the letter dated 8-9-2008. The copy of the chargesheet was never supplied to the petitioner. It was only on 15-11-2008 that the chargesheet was supplied to the petitioner for the first time. The enquiry officer too did not explain the procedure to be adopted. He did not allow the services of defence assistant to the petitioner. Not only this, the enquiry officer did not allowed the application of the petitioner demanding certain documents. The questions put by the petitioner were also rejected by the enquiry officer. He would further contend that there was totally non application of mind and even while recording the reasons in support of his findings the enquiry officer had not given any reasons whatsoever.

41. Per contra it is the contention of the learned counsel for the respondent that the petitioner was afforded all possible opportunity to put his case. He had appeared in all the proceedings. The day-to-day proceedings had been signed by him and were duly supplied to him. Shri Haider Ali appeared as a defence assistant on 11-5-2009 and only thereafter the management witnesses had been examined. The petitioner being the no information had been given to the petitioner. Joint Secretary of the union was not a novice. He was rather defended by a defence assistant and as such no prejudice has been caused to him. The enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

42. The conjoint reading of the deposition of the parties and the overwhelming documentary evidence on record, does show that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. A presumption in law thus does arises that the copy of the chargesheet apparently had been sent to the petitioner but he refused to receive the same. The same is not disputed. In fact the petitioner had filed reply to the same. The proceedings of the enquiry starting from 15-11-2008 to 30-06-2009 does show that the petitioner had appeared on each and every day when effective orders were passed. His

signatures bears testimony to the said fact and so does the signatures of defence assistant after 2-5-2009**.** In all fairness both the petitioner and defence assistant have admitted that they were supplied the day to day proceedings by the enquiry officer. The day-to-day proceedings do show that the adjournments were also granted at the asking of the petitioner as is clear from the order dated 04-5-2009 passed by the enquiry officer in the presence of the defence assistant. On 28-7-2009 the defence assistant had cross-examined management witnesses. The proceedings also bear the signatures of both the petitioner and the defence assistant. The testimony of RW-2 is duly corroborated by the documentary evidence placed on record *vide* Ex. RW-2/A-1 to Ex. RW-2/A-31.

43. The learned counsel for the petitioner thus further contend that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orisa titled as **Management of State Bank of India** Vs. **Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151.** It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an objection has been raised by the presenting officer *vis-a-vis* its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

44. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the Advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmahal Hotel** Vs. **Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd.** Vs. **Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union** Vs. **Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also *ipso facto* does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry officer and as held in **H.V Nirmala** Vs. **Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 *ipso facto* is not sufficient to vitiate the entire enquiry.

45. Till the recording of the findings is concerned reasonable opportunity has been afforded to the petitioner and so have been the principles of natural justice been followed. The initiation of chargesheet and proving the allegations therein have been done in a manner which are in consonance with the provisions of Certified Standing Orders of the respondent company as reflected in Ex. RX-13. The principles of natural justice also have seemingly been complied. As discussed above nothing much was elicited from the documents or the evidence on record to

impeach the veracity of the proceedings *vis-à-vis* grant of fair opportunity and the non- compliance of the principles of natural justice. The enquiry proceedings, however culminate with the imposition of penalty holding a person guilty and by way of filling of enquiry report is the first right. The second right however to plead for either no penalty or lesser penalty or even in the conclusion that the guilt stand accepted. This second right is exercisable at the second stage and the second stage consists of the issuance of notice to show cause against the proposed penalty and considering the reply to the notice and deciding upon the penalty.

46. The consideration of the findings recorded by an enquiry officer form an important and material stand before the disciplinary authority. It is incumbent upon the disciplinary authority to consider the report of the enquiry officer and the conclusion reached by him. If such a finding is to be one of the document to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is indeed a negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like an enquiry officer without giving the employee an opportunity to reply to it. As such the disciplinary authority is required to consider the evidence, report of the enquiry officer and the representation of the employee against it before imposing penalty, higher penalty would be the onus of this count. The case in hand pertains to dismissal.

47. Having said so, the perusal of the judgment titled as **Associate Cement Company Ltd.** Vs. **T.C Shrivashtva and others 1984 (Supp.) SCC 87**, however shows that unless the Certified Standing Orders provide for a 2nd show cause notice on the proposed punishment is not a condition precedent for imposing punishment. As per the judgment no enquiry which is otherwise fair and valid will be vitiated by non-offering of such second opportunity.

48. While testing the factual back-ground in the back-ground of the principles set out hereinabove it transpires that the respondent had on 23rd July, 2009 *vide* Ex. RX-24 sent written communication to the petitioner seeking comments, if any, on the findings of the enquiry officer. The enquiry report Ex. RW2/A-21 had also been sent along-with. The petitioner had also replied to the same *vide* Ex. RX-23.

49. Looking at the Certified Standing Orders of the respondent company, which has been placed on record as Ex.RX-13, the procedure for disciplinary action has been enunciated in para 26 which reads as follows:

"26. Procedure for disciplinary action:

Where the allegation of misconduct against any worker is reported or otherwise come to the notice of the management/manager a chargesheet in writing specifying the substance of allegations shall be given to the workman concerned requiring him to submit his written explanation within stipulated time which shall not be less than 48 hours. If an "workman refuses to receive the charge sheet, at least in the presence of any other workman, a copy of the chargesheet shall be sent to him by registered post under postal certificate and copy exhibited on the Notice Board. This shall be treated as sufficient evidence of the chargesheet having been served on the delinquent employee.

If the employee fails to submit his explanation within stipulated time, without any sufficient cause being shown, it will be presumed that he has no explanation to offer and action will proceed in the absence of any explanation. On receipt of the explanation, if it is found to be satisfactorily, the matter will be closed, otherwise a regular domestic enquiry will be held by the Manager or his nominee, wherein the workman shall be

given reasonable opportunity to defend himself. The management/manager shall be fully competent to appoint any other outsider as an enquiry officer if they so like. The delinquent workman shall be allowed to be represented assisted by any co-worker employed in the factory or representative as per section 36 of the Industrial Disputes Act, 1947. The charge sheeted employee shall be bound to present himself before the enquiry officer personally. If he fails to do so on the first appointed date, the enquiry officer may adjourn the proceedings to give him sufficient opportunity or may proceed *ex-parte* at this discretion. In case an employee does not present on the adjourned date, it will be a sufficient reason for the enquiry officer to presume that the delinquent employee was deliberately avoiding the participation in the enquiry and to proceed *ex-parte*."

Para 27-A of the Standing Orders further provide the punishment which may be awarded to a workman and the same reads as follow:

27-A depending upon the severity of the misconduct, the punishment awarded to a workman may be any of the following:

1. Dismissal

2. Discharge

3. Suspension

4. Warning/Censure

5. Stoppage of annual increment not exceeding two increments

6. Demotion to the next lower grade.

50. The reading of para 27-A shows that it does not provide for a second opportunity to be granted to the delinquent. No requirement has been envisaged in the standing orders to giving the delinquent any opportunity to offer any explanation. In the case in hand the respondents had afforded opportunity to the petitioner to offer comments in respect of the findings recorded by the enquiry officer within five days and the copy of the enquiry report Ex. RW2/A-21`had also been supplied along-with.

51. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Associate Cement Company Ltd. *Vs.* T.C Shrivastva and others discussed hereinabove *supra,* it is clear that the plain reading of the standing orders read as a whole does not warrant an assumption that second show cause notice had to be issued to the petitioner. It cannot thus be said that the enquiry was even vitiated on this count too.

52. For all the reasons detailed hereinabove this Court is constrained to hold that the departmental enquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice much less prejudice de-facto. In the case in hand the petitioner has failed to prove the violation of the mandatory and statutory Rules which would have tantamounted to prejudice. The infringement of Rules which are merely directory in nature the element of de-facto prejudice had to be pleaded and shown, which has not been done in the case in hand. The onus was on the petitioner to have shown the grounds resulting in de-facto prejudice and that he had been put to a disadvantage thereof, which has not been done. In this behalf support can be ably drawn from the judgment of Hon'ble Supreme Court titled as **Union of India** Vs. **Alok Kumar (2010) 5 SCC 349.**

53. However, the standing orders of the respondent company Ex. RX-13 though totally silent on the issuance of a 2nd show cause notice does talk of the action to be taken by a disciplinary authority in case of sexual harassment but not relating to imposition of major penalty, like dismissal from service. However, Rule 27-A of the standing orders provide for punishments ranging from dismissal to censure and stoppage of increments. Even, if the respondent was not obligated to issue a show cause for the proposed punishment, the respondent management was duty bound to have considered the nature of charges and its gravity, particularly keeping in view the fact that no past misconduct has been relied upon by the respondent/company. These facts had to be taken into consideration by the disciplinary authority. To this limited extent the breach of principles of natural justice was itself a prejudice and no other "de-facto" prejudice was required to be proved.

54. The gravamen of the allegation in the chargesheet are that the petitioner and the other workmen had on 8-7-2008 and 9-7-2008 gheraoed the General Manager and stopped workers from working on the machines at the production unit and threatened them with dire consequences in case they did not stop work. Admittedly, the petitioner was the Joint Secretary of the union and the other workmen who have been dismissed were also the leaders of the union. The witnesses of the management examined by the enquiry officer *i.e.* MW-1 D.K. Sharma, D.G.M. MW-2 Neeraj Gupta, D.G.M., and MW-3/1 Sushil Kumar Sharma, Sr. Engineer have stated that certain workmen had come and stopped work in the de-burring section and the sinter line. Though, undoubtedly all the witnesses have deposed that the petitioner was also a part of the mob, but the fact remains that admittedly he was also the president of the union. Except from the threat of lying prostrate on the machines nothing else has been attributed to the workmen. There is no evidence that any collateral damage was done to the machines or the factory. All the witnesses have admitted that there was a strike/lock-out in the factory and the workers had resumed the work only after the Labour Commissioner had passed an order to this effect. Even as per the affidavit filed by RW-1 Shri Balwinder Singh, HR Coordinator there was strike at 10.00 A.M. on 8-7-2008. Per him the strike continued from 8-7-2008 till 30-7-2008. The strike had been prohibited by the Labour Commissioner on 31-7-2008 and the workers had resumed duties only thereafter.

55. It is thus clear that whatever had happened on 8-7-2008 and 9-7-2008 was apparently in view of the dispute having arisen between the management and the workers union. Oblivious of the fact that no notice was required to be issued to the petitioner and other workmen as per the Standing Orders before dismissing them, it was still incumbent upon the disciplinary authority to have taken into consideration the gravity of the misconduct, the previous record of the workmen and any other extenuating or aggravating circumstance at the time of the passing of the order of dismissal. RW-1 Shri Balwinder Singh who is not only the HR Coordinator but also the presenting officer has admitted that the conduct of the petitioner was good throughout. Moreover, the respondent had not notified to the petitioner or the other workmen anything about his past record in the show cause notice. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

56. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra** Vs. **State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd.** Vs. **Hari Singh decided on**

30-4-2015, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

57. The facts narrated and discussed hereinabove clearly show that not only have the witnesses only partially supported the case of the workman in the enquiry proceedings but even the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. The factum that the strike had already ensued on 8-7-2008 itself, and the workers were the President and the office bearers of the union did not also weigh with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

58. Thus while holding that the respondents have conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove *supra,* has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove, in such a situation with holding of two increments with cumulative effect will be more than adequate punishment for such an employee. The issue is decided accordingly.

Relief :

As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today this 23rd day of April, 2019.

CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 15 of 2013

Instituted on 24-4-2013

Decided on 17-4-2019

Arvind Singh s/o Shri Munshi Singh, r/o House No. 1429, Kamla Nagar, Kalka, District Panchkula Haryana . .*Petitioner.*

Versus

1. M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. through its General Manager.

2. The Factory Manager, M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

ORDER/AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of services of Shri Arvind Singh s/o Shri Munshi Singh r/o House No. 1429 Kamla Nagar Kalka, District Panchkula Haryana w.e.f. 2-4-2012 by the management of M/s Federal Mogul Bearing India Ltd., Plot No. 5, Sector-2 Parwanoo, District Solan, H.P. after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement in service, back- wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In pursuance to the aforesaid reference, it is the pleaded case of the petitioner in the statement of claim that he came to be appointed as an operator on 1-10-1986 and worked as such till 3-11-2008. The petitioner came to be placed under suspension *w.e.f.* 1-11-2008 and was eventually dismissed *w.e.f.* 2-4-2012 on false allegations and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act).

3. The work and conduct of the petitioner was always upto the mark. He was the elected Propaganda Secretary of the workers union.

4. It is further the averred case of the petitioner that the allegations leveled against him *vide* chargesheets dated 28-7-2008 and 8-9-2008 were totally false and baseless. The chargesheets were supplied to the petitioner only after the enquiry proceedings had started. Initially the company had leveled false allegations against certain persons *vide* a letter dated 9-7-2008. The names of some of the persons were deleted and those of the petitioner and other union leaders were retained just to create pressure upon them to compromise/withdraw the cases filed against the company. The workers had filed applications for increasing the retirement age from 55 years to 60 years. The company had filed SLP No. 9163/2008 before the Hon'ble Supreme Court of India, which was pending adjudication and the chargesheet thus had been issued to the petitioner and other union leaders to create pressure upon them to compromise the matter.

5. It is further the case of the petitioner that the enquiry officer Shri V. K. Gupta had fixed the enquiry on 15-11-2008 which information had been given to the petitioner on 1-11-2008. It is only on 15-11-2008 the petitioner came to know about the chargesheet dated 28-7-2008 and 8-9-2008. It was on the asking of the enquiry officer that the respondent had

supplied the two chargesheets to the petitioner on 15-11-2008, which is stated to be totally illegal and against the basic principles of natural justice.

6. It is also the averred case of the petitioner that he never went with Mohan Lal, Dwarka Nath and Harvinder Singh and never instructed any operator to stop working on the machines on 8-7-2008. The operators had never sat idle. The petitioner never went to the de-burring station and never threatened any worker to stop work. The petitioner has even denied that on 9-7-2008, he and other co-workers namely S/Shri Girdhari Lal, Dwarka Nath and Harvinder had gheraoed the General Manager Operation-*cum*-Factory Manager and Dy. GM manufacturing and never distracted the staff members from operating the machines. The entire allegations in this behalf leveled by the management were stated to be baseless and just to harass and terminate the services of the petitioner.

7. It is also the averred case of the petitioner that an earlier domestic enquiry against Kulwant Kumar, Nirmal Singh and Prakash for submitting false medical claim was also unfair, improper and against the basic principles of natural justice. They had been dismissed from service illegally and without any credible proof. The workers union had never resorted to any strike on 8-7-2008 against their dismissal. The workers had requested the company to allow them to work in the factory. The workers were not allowed to work in the company *w.e.f.* 14-7-2008 to 31-10-2008. It is only on the intervention of the Labour Commissioner that the workers were allowed to resume the work. The dismissal of the three workers was also stated to be in violation of clause 17(3) of a settlement dated 2-6-2007.

8. The petitioner was allowed to enter the factory only on 1-11-2008 but after some hours he was placed under suspension.

9. Further per the petitioner the Labour Officer, Solan had never observed that the workers of the respondents were sitting idle and were not doing any work. In fact it was the management which did not allow the workers to work in the factory and had declared a lock-out, which is clear from the statements of one Rakesh Chand Sharma, Production Supervisor and Shri Agya Ram, Security Supervisor of the company. The workers had also made a complaint to the Labour Commissioner, who had prohibited the lock-out declared by the company. The reference had been sent to the Labour Court *vide* Reference No. 58/2008 and the said reference had been partly up-held by the Hon'ble High Court and the company had agreed on a compromise and to pay a lump-sum amount of ` 2,60,000/- and increase the salary by ₹ 7,672/-.

10. It is also averred by the petitioner that the enquiry officer has not conducted the enquiry fairly. No opportunity was afforded to the petitioner to defend his case. The enquiry was started on 1-11-2008 *i.e.* prior to the suspension of the petitioner and that too without intimation to him. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The enquiry officer chose not to write the exact words said by the witnesses. The enquiry officer has not given any reason for his findings. He had not supplied certain documents sought by the petitioner. The enquiry, as per the petitioner, is totally unfair and violative of the principles of natural justice. The permission sought by the management to dismiss the petitioner on the basis of the aforesaid enquiry is also illegal and beyond the fore-corners of law. The punishment of dismissal is also stated to be disproportionate. The permission granted by the Labour Court to dismiss the services of the petitioner without deciding Reference No. 45/2008 is also not justified in the eyes of law.

11. The petitioner has denied that he has ever indulged in any sort of misconduct including threatening, assaulting, intimidating, insubordination, striking, instigating the workers to participate in a strike. As per the petitioner it was the management who had declared an illegal lock-out and for the said reason alone, the company had agreed to pay a lump sum amount to the workers in Reference No. 58/2008. The charges leveled against the petitioner are false as none of the witnesses have supported the case of the management, as is clear from the statement of Shri Rakesh Sharma and Agya Ram Sharma.

12. The chargesheet dated 28-7-2008 does not talk about the incident dated 8-7-2008 and the chargesheet dated 8-9-2008 is stated to be an afterthought. The intention of the respondent company was mainly to victimize the union leaders including the petitioner.

13. It is thus the case of the petitioner that the action of the respondent management tantamount to unfair labour practice and the action of the respondent is violative of the provisions of Industrial Disputes Act and against the cardinal principles of natural justice. The petitioner is un-employed since 1-11-2008. It is thus prayed that the dismissal of the petitioner *w.e.f.* 2-4-2012 may be quashed and set aside. He may be reinstated in service with all consequential benefits. The suspension of the petitioner *w.e.f.* 1-11-2008 be also quashed and set aside and the petitioner be given full wages *w.e.f.* 1-11-2008 and the company be burdened with heavy damages amounting to ` ten lakhs.

14. While contesting the claim the respondents have *inter-alia* raised preliminary objections *vis-à-vis* maintainability and the petitioner having not approached this Court with clean hands. It is also averred that the reference is not maintainable as the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. Since, Reference No. 58/2008 was pending adjudication an application under section 33(1) of the Act was moved to seek permission of the Court, which was granted *vide* order dated 31-3-2012. The punishment was stated to be commensurate with the misconduct of the petitioner.

15. On merits, it is the case of the respondents that the petitioner was issued chargesheets dated 28-7-2008 and 8-9-2008 and he was placed under suspension *w.e.f.* 1-11-2008 in terms of the provisions contained in the Certified Standing Orders of the respondent company. An enquiry in respect of the misconduct referred in the chargesheets was conducted against the petitioner in which he duly participated. The charges stand proved during the course of enquiry and thereupon permission was sought from the Labour Court under section 33 of the Act. He was eventually dismissed *w.e.f.* 5-4-2012. The action of the respondents is stated to be bonafide and as per the provisions of the Act and Certified Standing Orders of the respondent company. The respondents admitted that there was a union by the name and style of Gabriel Employees Union but the petitioner being elected Propaganda Secretary of the union is denied for want of knowledge.

16. The charges levied against the petitioner in the two chargesheets are stated to be correct and as per the respondent, stands duly proved during the course of the enquiry. Per the respondents on 9-7-2008, a mob of workers of A-shift and General shift, was lead by Dwarka Nath and S/Shri Girdhari Lal and Harvinder Singh and included the petitioner gherao the General Manager, Operation-*cum*-Factory General Manager Manufacturing. As per the respondent, the petitioner on the same date had shouted slogans that they will not allow the staff members to operate the machines. The petitioner had also gone to the de-burring station along-with these workers and threatened the workers not to work. On account of such threats the work in the de-burring section also came to a halt. On 9-7-2008, too the petitioner and one Dwarka Nath, Girdhari Lal and Harvinder had stopped the work at the sinter line, leading to a strike.

17. It is further the case of the respondent that the petitioner was chargesheeted for misconduct under clauses 26-B (i), (ii), (iii), (xxxvi), 26-B(iii) and 26-B (Li) of the Certified Standings Orders of the respondent company for threatening, assaulting, intermediating, misbehaving with the officers in the factory premises, inciting, participating, intimidating and coercing the employees to strike and stop work. Per the respondents the chargesheets dated 28-7-2008 and 8-9-2008 were sent to the petitioner but he refused to receive the same. He failed to file reply. During the course of the enquiry the reply to the chargesheets were filed by the petitioner. It is denied that the copy of the chargesheets were not supplied to the petitioner. Per the respondents, he refused to receive the chargesheets. The enquiry officer was appointed *vide* letter dated 18-10-2008 and during the course of enquiry the chargesheets were duly provided to the petitioner and he filed the reply to the same. Per the respondents the procedure prescribed for disciplinary action under the Certified Standing Orders of the replying respondent was duly followed.

18. It is the case of the respondent management that the union had resorted to an illegal strike and the replying respondents had sent several communications to them to desist from the strike and to join duty but to no effect. The strike was prohibited by the Labour Commissioner and due intimation of the said was duly sent to the petitioner and the union, however, the workers did not resume duty. The workers had re-joined duty after giving an undertaking that they will work peacefully, maintain discipline and abide by the terms and conditions of the standing orders. The services of Kulwant Kumar, Nirmal Singh and Prakash were terminated in respect of submitting false and fabricated medi-claims.

19. Per the respondents the enquiry had been conducted as per the principles of natural justice and the Certified Standing Orders of the replying respondent. A fair hearing was afforded to the petitioner. The petitioner cross-examined the management witnesses and also examined his witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copy of day-to-day proceedings of the enquiry. The enquiry officer had given a detailed and reasoned enquiry report. The enquiry report was also supplied to the petitioner with second show cause notice and a reply had been duly filed for the same by the petitioner. The rest of the contentions in the claim petition were denied. It is thus prayed that the petition be dismissed, being devoid of merits.

20. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

21. I notice that on 16-5-2014, the following preliminary issue came to be framed by my Learned Predecessor:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP.*

2. Relief:

22. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:

Issue No. 1 : No. However, the punishment imposed by the disciplinary authority is disproportionate.

Relief: Consequently, the reference is partly answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

24. A preliminary issue had come to be framed by my learned Predecessor on 16-5-2014 as to whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice. The case propounded by the petitioner, however in brief was that the chargesheets dated 28-7-2008 and 8-9-2008 were not only false and baseless but were supplied to the petitioner only after the enquiry proceedings had commenced. It is also the case of the petitioner that the enquiry officer so appointed by the respondent management had fixed the enquiry on 15-11-2008 which information had been given to the petitioner on 1-11-2008. He was only informed about the enquiry on 1-11-2008. He came to know about the chargesheets on 15-11-2008 only.

25. It is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry fairly. The petitioner had not been afforded proper opportunity to defend his case. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The documents have been not been supplied to the petitioner. The enquiry officer chose not to write the exact words of the witnesses. The enquiry officer had not recorded any reasons to substantiate his findings. The enquiry conducted by the enquiry officer was thus stated to be totally unfair and against the principles of natural justice and the punishment of dismissal was also stated to be disproportionate.

26. On the allegations made in the two chargesheets the petitioner denied having instigated or coerced the workers from resorting to stoppage of work or threatening, assaulting, intermediating, misbehaving or inciting the employees to go on strike on 8-7-2008 and 9-7-2008. As per the petitioner the intention of the respondent company was to victimize the union leaders including the petitioner and to terminate them from service.

27. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. The chargesheets have been duly sent to the petitioner but he refused to receive the same. During the course of enquiry the petitioner had filed reply to the chargesheets. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The petitioner cross-examined the management witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copies of day-to-day proceedings of the enquiry. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

28. The petitioner while appearing as his own witness as PW-1 has reiterated the averments made in the statement of claim. He has placed on record the letter of dismissal *vide* Ex. P-1. Photographs and certificates earned by the petitioner have been placed on record as Ex. P-2 to Ex. P-9. He has also placed on record various letters granting him increments *vide* Ex. P-10 to Ex. P-26 and the suspension letter Ex. P-27. He has placed on record order dated 18-12-2016 passed by the Hon'ble High Court in CWP No. 4175/2012 Ex. P-28, demand notice

Ex. P-29, copy of resolution dated 17-1-2016 Ex. P-30, copy of the resolution reflecting the executive body of the workers union Ex. P-31, letter dated 9-7-2008 Ex. P-32 and letter dated 10-7-2008 Ex. P-33.

29. In his cross-examination the petitioner has denied that the chargesheets dated 28-7-2008 (Ex. R-1) and 8-9-2008 (Ex. R-3) were ever sent by the respondent at his residential address and at the striker's camp, but he admits having received them during the enquiry on 15-11-2008 alongwith its Hindi translation (Ex. R-2 and Ex. R-4). He admits having filed reply to both the aforesaid chargesheets *vide* Ex. R-5 and Ex. R-6.

30. It further transpires from his testimony that the petitioner had appeared before the enquiry officer on 15-11-2008, though he was not present on the first day *i.e.* on 1-11-2008. The petitioner has himself admitted that he was supplied the chargesheets and its Hindi version for the first time on 15-11-2008. He has also admitted that on 2-12-2008, he was given further time to file reply to the chargesheets. On 20-12-2008, the copies of the documents filed by the management were supplied to him and he was also apprised about the names of the management witnesses (MW's). On 4-2-2009, the statement of witnesses of the management were supplied to the petitioner and they were cross-examined on 8-5-2009. The co-worker of the petitioner Shri Haider Ali started representing the petitioner *w.e.f.* 27-4-2009, in the enquiry and he even cross-examined the four witnesses of the management. The cross-examination of the witnesses has been placed on record. It is admitted by the petitioner that the cross-examination of the management witnesses bears his signatures and those of the co-worker Shri Haider Ali.

31. He has also admitted in his deposition that he had filed the statement of his witnesses. The petitioner had been admittedly cross-examined on 8-6-2009, though, he has submitted that the enquiry officer had not recorded his version.

32. It further transpires from the testimony of the petitioner that the respondent company had issued a letter dated 12-8-2009 *vide* Ex. R-10 alongwith enquiry report (Ex. R-11). The petitioner has also admitted that he has filed reply to the same *vide* Ex. R-12.

33. The petitioner has also examined one Shri Haider Ali as PW-2. The said witness was the defence assistant/co-worker in the enquiry of the petitioner. Per him the enquiry officer had not explained any procedure to him at the beginning of the enquiry. The enquiry officer did not record the questions put by the defence assistant. He used to write the answer as per his choice. Per this witness the documents demanded by him from the management were also not supplied to him. Certain questions put by him were dis-allowed by the enquiry officer. Per the witness the enquiry was not conducted in a proper and fair manner and the enquiry officer had not followed the principles of natural justice. It is however admitted by the witness that he appeared in the enquiry proceedings for the first time on 27-4-2009. He has admitted the signing of proceedings dated 27-4-2009 (Ex. RXA) & 28-4-2009 (Ex. RXB). He has admitted that on 8-5-2009, the order of the proceedings with statements of witnesses (MW-1 to MW-4) were supplied to him *vide* Ex. RXC and he had cross-examined the management witnesses (MW-1 to MW-4) and signed their statements on each and every page *vide* Ex. RXD to Ex. RXV. He has also admitted that the petitioner had examined his defence witnesses and even the petitioner was cross-examined on 8-6-2009 which bears his signatures (Ex. RXY-1 to Ex. RXY-10). He has admitted that written arguments were submitted to the enquiry officer on 29-6-2009. He denied that the copies of the day-to-day enquiry proceedings were supplied to them.

34. The petitioner further examined three witnesses namely Ms. Sarla Shah (PW-5), Shri Harbhajan Singh (PW-6) and Shri Harjinder Singh (PW-7) to portray that on 8-7-2008 the petitioner and the other union members had not stopped any other worker from doing their work in the factory or the sinter line.

35. The petitioner has further examined one Shri Rakesh Chand, Production Supervisor (PW-3) and Shri Agya Ram, Security Supervisor (PW-4) to contend that they had filed statements before this Court on affidavit that on 8-7-2008 the petitioner and other workers had never threatened any worker to stop the work. The allegations against them were totally false. Their statements alongwith affidavits have been placed on record as Ex. PW-3/A and Ex. PW-4/A respectively.

36. The respondents on the other hand have examined Shri Balwinder Singh, Co-ordinator HR as RW-1 who has reiterated the averments made in the reply in his affidavit Ex. RW-1/A. Apart from other documents he has placed on record the enquiry report pertaining to three workers S/Shri Kulwant Kumar, Prakash Singh and Nirmal Singh, because of whose termination the petitioner and the workers had stopped work. He has also placed on record the Certified Standing Orders of the company Ex. RW-1/E. The said witness was also the presenting officer or the management representative before the enquiry officer. In his cross-examination he has admitted that the petitioner was the Propaganda Secretary of the union and his conduct during his entire service was good. He has admitted that the workers union had given an application before the Certifying Officer to increase the retirement age of workers from 55 years to 60 years in the year 1998 and the matter went up till the Hon'ble Supreme Court and was eventually decided in favour of the workers.

37. The respondents have also examined the enquiry officer Shri V. K. Gupta as RW-2. Per him he had intimated the date of enquiry to the petitioner *vide* registered letter dated 21-10-2008. The petitioner was not present on that day as such letter dated 1-11-2008 was issued to the petitioner intimating him the next date as 15-11-2008. On 15-11-2008 the petitioner was present. The chargesheet dated 28-7-2008 and 8-9-2008 alongwith documents were handed over to the petitioner. The management was asked to submit additional documents, if any, alongwith the list of witnesses on the next day *i.e.* 2-12-2008. On that day the petitioner has sought legible copy of chargesheet dated 8-9-2008 which was duly given to him alongwith Hindi translations. On 12-12-2008 the enquiry was adjourned as the petitioner was absent on account of medical reasons. On 20-12-2008 the presenting officer of the respondent placed on record documents copies of which were given to the petitioner. On 4-2-2009 the petitioner made a request to stop the enquiry proceedings on account of pendency of stay order of Labour Court. The petitioner was asked to provide the copy of the stay order. However, he could not produce the same. Written statements of the witnesses were sought for 4-2-2009. The petitioner requested for a date for cross-examination. Eventually, on 27-4-2009 for the first time co-worker of the petitioner namely Shri Haider Ali appeared and the witnesses of the management were cross-examined on 8-5-2009. The day-to-day proceedings were duly signed by the petitioner, co-worker and the presenting officer. On 22-5-2009, the petitioner had placed on record his written statement. The written submissions were submitted by the petitioner and enquiry proceedings dated 29-6-2009 was given to the petitioner. As per this witness due opportunity was afforded to the petitioner to put forth his case and cross-examine the witnesses of the management. The petitioner never objected to the witness being appointed as an enquiry officer. The enquiry has been done in a just fair and impartial manner.

38. The witness has denied that he had not explained the procedure to be adopted in the enquiry, though he admitted that he had not mentioned the same in the enquiry proceedings. He has admitted that on 15-11-2008 when the petitioner first time appered in the enquiry proceedings, he had not informed him that he can bring the defecne assistant. Per this witness the petitioner had never asked for the services of a defence assistant. He has admitted that his father was a labour law advisor of Gabriel India Ltd. Per this witness he had only disallowed irrelevant questions and he had also recorded the reasons for disallowing the questions. He has admitted that for certain questions the reasons for disallowance has not been written.

39. The respondent management has literally placed on record the entire proceedings o the enquiry starting from chargesheet Ex. R-1 to the enquiry report Ex. R-11. So much so even the day-to-day proceedings conducted by the enquiry officer have been placed on recorded starting from 1-11-2008 till 29-6-2009 Ex. RW-2/B-1 to Ex. RW-2/B-21. The respondents have also placed on record the Certified Standing Orders Ex. RW-1/E and placed on record the permission granted by this Court for dismissing the services of the respondent *vide* Ex. R-13.

40. Much was urged by the learned counsel for the petitioner that the petitioner was placed under suspension for the charges referred in letter dated 28-7-2008 but enquiry was conducted in respect of the charges not only relating to the letter dated 28-7-2008 but also those reflected in the letter dated 8-9-2008. The copy of the chargesheet was never supplied to the petitioner. It was only on 15-11-2008 that the chargesheet was supplied to the petitioner for the first time. The enquiry officer too did not explain the procedure to be adopted. He did not allow the services of defence assistant to the petitioner. Not only this, the enquiry officer did not allowed the application of the petitioner demanding certain documents. The questions put by the petitioner were also rejected by the enquiry officer. He would further contend that there was totally non application of mind and even while recording the reasons in support of his findings the enquiry officer had not given any reasons whatsoever.

41. Per contra it is the contention of the learned counsel for the respondent that the petitioner was afforded all possible opportunity to put his case. He had appeared in all the proceedings. The day-to-day proceedings had been signed by him and were duly supplied to him. Shri Haider Ali appeared as a defence assistant on 27-4-2009 and only thereafter the management witnesses had been examined. The petitioner being the Propaganda Secretary of the union was not a novice. He was rather defended by a defence assistant and as such no prejudice has been caused to him. The enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

42. The conjoint reading of the deposition of the parties and the overwhelming documentary evidence on record, does show that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. The petitioner had refused to receive the same chargesheets prior to initiation of enquiry. Even assuming the chargesheet was not supplied the fact remains that it was handed-over to the petitioner on 15-11-2008 by the enquiry officer. The same is not disputed. In fact the petitioner had filed reply to the same. The proceedings of the enquiry starting from 15-11-2008 Ex. RW-2/B-2 to Ex. RW-2/B-21 does show that the petitioner had appeared on each and every day when effective orders were passed. His signatures bears testimony to the said fact and so does the signatures of defence assistant after 27-4-2009. In all fairness both the petitioner and defence assistant have admitted that they were supplied the day to day proceedings by the enquiry officer. The day-to-day proceedings do show that the adjournments were also granted at the asking of the petitioner as is clear from the order dated 15-5-2009 passed by the enquiry officer in the presence of the defence assistant. On 8-5-2009 the defence assistant had cross-examined one Shri Sushil Kumar MW-1. The proceedings also bear the signatures of both the petitioner and the defence assistant. The testimony of RW-2 is duly corroborated by the documentary evidence placed on record *vide* Ex. RW-2/B-1 to Ex. RW-2/B-21.

43. The learned counsel for the petitioner thus further contend that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orisa titled as **Management of State Bank of India** Vs. **Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151**. It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an

objection has been raised by the presenting officer *vis-a-vis* its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

44. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the Advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmahal Hotel** Vs. **Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd.** Vs. **Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union** Vs. **Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also *ipso facto* does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry officer and as held in **H.V Nirmala** Vs. **Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 *ipso facto* is not sufficient to vitiate the entire enquiry.

45. Till the recording of the findings is concerned reasonable opportunity has been afforded to the petitioner and so have been the principles of natural justice been followed. The initiation of chargesheet and proving the allegations therein have been done in a manner which are in consonance with the provisions of Certified Standing Orders of the respondent company as reflected in Ex. RW-1/C. The principles of natural justice also have seemingly been complied. As discussed above nothing much was elicited from the documents or the evidence on record to impeach the veracity of the proceedings *vis-à-vis* grant of fair opportunity and the non- compliance of the principles of natural justice. The enquiry proceedings, however culminate with the imposition of penalty holding a person guilty and by way of filling of enquiry report is the first right. The second right however to plead for either no penalty or lesser penalty or even in the conclusion that the guilt stand accepted. This second right is exercisable at the second stage and the second stage consists of the issuance of notice to show cause against the proposed penalty and considering the reply to the notice and deciding upon the penalty.

46. The consideration of the findings recorded by an enquiry officer form an important and material stand before the disciplinary authority. It is incumbent upon the disciplinary authority to consider the report of the enquiry officer and the conclusion reached by him. If such a finding is to be one of the document to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is indeed a negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like an enquiry officer without giving the employee an opportunity to reply to it. As such the disciplinary

authority is required to consider the evidence, report of the enquiry officer and the representation of the employee against it before imposing penalty, higher penalty would be the onus of this count. The case in hand pertains to dismissal.

47. Having said so, the perusal of the judgment titled as **Associate Cement Company Ltd.** Vs. **T.C Shrivashtva and others 1984 (Supp.) SCC 87**, however shows that unless the Certified Standing Orders provide for a 2nd show cause notice on the proposed punishment is not a condition precedent for imposing punishment. As per the judgment no enquiry which is otherwise fair and valid will be vitiated by non-offering of such second opportunity.

48. While testing the factual back-ground in the back-ground of the principles set out hereinabove it transpires that the respondent had on 12th August, 2009 *vide* Ex. R-10 sent written communication to the petitioner seeking comments, if any, on the findings of the enquiry officer. The enquiry report Ex. RW-11 had also been sent along-with. The petitioner had also replied to the same.

49. Looking at the Certified Standing Orders of the respondent company, which has been placed on record as Ex. RW-1/E, the procedure for disciplinary action has been enunciated in para 26 which reads as follows:

"26. Procedure for disciplinary action:

Where the allegation of misconduct against any worker is reported or otherwise come to the notice of the management/manager a chargesheet in writing specifying the substance of allegations shall be given to the workman concerned requiring him to submit his written explanation within stipulated time which shall not be less than 48 hours. If an "workman refuses to receive the charge sheet, at least in the presence of any other workman, a copy of the chargesheet shall be sent to him by registered post under postal certificate and copy exhibited on the Notice Board. This shall be treated as sufficient evidence of the chargesheet having been served on the delinquent employee.

If the employee fails to submit his explanation within stipulated time, without any sufficient cause being shown, it will be presumed that he has no explanation to offer and action will proceed in the absence of any explanation. On receipt of the explanation, if it is found to be satisfactorily, the matter will be closed, otherwise a regular domestic enquiry will be held by the Manager or his nominee, wherein the workman shall be given reasonable opportunity to defend himself. The management/manager shall be fully competent to appoint any other outsider as an enquiry officer if they so like. The delinquent workman shall be allowed to be represented assisted by any co-worker employed in the factory or representative as per section 36 of the Industrial Disputes Act, 1947. The charge sheeted employee shall be bound to present himself before the enquiry officer personally. If he fails to do so on the first appointed date, the enquiry officer may adjourn the proceedings to give him sufficient opportunity or may proceed *ex-parte* at this discretion. In case an employee does not present on the adjourned date, it will be a sufficient reason for the enquiry officer to presume that the delinquent employee was deliberately avoiding the participation in the enquiry and to proceed *ex-parte*."

Para 27-A of the Standing Orders further provide the punishment which may be awarded to a workman and the same reads as follow:

27-A depending upon the severity of the misconduct, the punishment awarded to a workman may be any of the following:

1. Dismissal

2. Discharge

3. Suspension

4. Warning/Censure

5. Stoppage of annual increment not exceeding two increments.

6. Demotion to the next lower grade.

50. The reading of para 27-A shows that it does not provide for a second opportunity to be granted to the delinquent. No requirement has been envisaged in the standing orders to giving the delinquent any opportunity to offer any explanation. In the case in hand the respondents had afforded opportunity to the petitioner to offer comments in respect of the findings recorded by the enquiry officer within five days and the copy of the enquiry report Ex. RW-11 had also been supplied along-with.

51. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Associate Cement Company Ltd. *Vs.* T.C. Shrivastva and others discussed hereinabove *supra,* it is clear that the plain reading of the standing orders read as a whole does not warrant an assumption that second show cause notice had to be issued to the petitioner. It cannot thus be said that the enquiry was even vitiated on this count too.

52. For all the reasons detailed hereinabove this Court is constrained to hold that the departmental enquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice much less prejudice de-facto. In the case in hand the petitioner has failed to prove the violation of the mandatory and statutory Rules which would have tantamounted to prejudice. The infringement of Rules which are merely directory in nature the element of de-facto prejudice had to be pleaded and shown, which has not been done in the case in hand. The onus was on the petitioner to have shown the grounds resulting in de-facto prejudice and that he had been put to a disadvantage thereof, which has not been done. In this behalf support can be ably drawn from the judgment of Hon'ble Supreme Court titled as **Union of India** Vs. **Alok Kumar (2010) 5 SCC 349.**

53. However, the standing orders of the respondent company Ex. RW-1/E, though totally silent on the issuance of a 2nd show cause notice does talk of the action to be taken by a disciplinary authority in case of sexual harassment but not relating to imposition of major penalty, like dismissal from service. However, Rule 27-A of the standing orders provide for punishments ranging from dismissal to censure and stoppage of increments. Even, if the respondent was not obligated to issue a show cause for the proposed punishment, the respondent management was duty bound to have considered the nature of charges and its gravity, particularly keeping in view the fact that no past misconduct has been relied upon by the respondent/company. These facts had to be taken into consideration by the disciplinary authority. To this limited extent the breach of principles of natural justice was itself a prejudice and no other "de-facto" prejudice was required to be proved.

54. The gravamen of the allegation in the chargesheet are that the petitioner and the other workmen had on 8-7-2008 and 9-7-2008 gheraoed the General Manager and stopped workers from working on the machines at the production unit and threatened them with dire consequences in case they did not stop work. Admittedly, the petitioner was the President of the union and the other workmen who have been dismissed were also the leaders of the union. The witnesses of the management examined by the enquiry officer *i.e.* MW-1 Sushil Kumar Sharma, MW-2 Deep Ram Assistant Manager, MW-3 Neeraj Gupta, General Manager and MW-4 D.K. Sharma, DGM have stated that certain workmen had come and stopped work in the de-burring section and the sinter line. Though, undoubtedly all the witnesses have deposed that the petitioner was leading the workers, but the fact remains that admittedly he was also the president of the union. Except from the threat of lying prostrate on the machines nothing else has been attributed to the workmen. There is no evidence that any collateral damage was done to the machines or the factory. All the witnesses have admitted that there was a strike/lock-out in the factory and the workers had resumed the work only after the Labour Commissioner had passed an order to this effect. Even as per the affidavit filed by RW-2 Shri Balwinder Singh, HR Coordinator there was strike at 10.00 A.M. on 8.7.2008. Per him the strike continued from 8-7-2008 till 30-7-2008. The strike had been prohibited by the Labour Commissioner on 31-7-2008 and the workers had resumed duties only thereafter.

55. It is thus clear that whatever had happened on 8-7-2008 and 9-7-2008 was apparently in view of the dispute having arisen between the management and the workers union. Oblivious of the fact that no notice was required to be issued to the petitioner and other workmen as per the Standing Orders before dismissing them, it was still incumbent upon the disciplinary authority to have taken into consideration the gravity of the misconduct, the previous record of the workmen and any other extenuating or aggravating circumstance at the time of the passing of the order of dismissal. RW-2 Shri Balwinder Singh who is not only the HR Coordinator but also the presenting officer has admitted that the conduct of the petitioner was good throughout. Moreover, the respondent had not notified to the petitioner or the other workmen anything about his past record in the show cause notice. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

56. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra** Vs. **State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd.** Vs. **Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

57. The facts narrated and discussed hereinabove clearly show that not only have the witnesses only partially supported the case of the workman in the enquiry proceedings but even the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. The factum that the strike had already ensued on 8-7-2008 itself, and the workers were the President and the office bearers of the union did not also weigh with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is

thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

58. Thus while holding that the respondents have conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove *supra,* has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove, in such a situation with holding of two increments with cumulative effect will be more than adequate punishment for such an employee. The issue is decided accordingly.

Relief :

As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today this 17th day of April, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 16 of 2013

Instituted on 24-4-2013

Decided on 23-4-2019

Mohan Lal s/o Shri Rakha Ram r/o House No-832/1, B-1, Rathore Colony, Pinjore District Panchkula, Haryana . .*Petitioner.*

Versus

1. The M/s Federal Mogul Bearing India Ltd. Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. through its General Manager.

2. The Factory Manager M/s Federal Mogul Bearing India Ltd. Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

ORDER/AWARD

The following reference was received for adjudication from the appropriate government:

> **"Whether termination of services of Shri Mohan Lal s/o Shri Rakha Ram, r/o House No-832/1, B1, Rathore Colony, Pinjore, District Panchkula, Haryana. w.e.f. 5-4-2012 by the management of M/s Federal Mogul Bearing India Ltd., Plot No. 5 Sector-2 Parwanoo, District Solan, H.P. after conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement in service, back-wages, seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"**

2. In pursuance to the aforesaid reference, it is the pleaded case of the petitioner in the statement of claim that he came to be appointed as an operator on 02-04-1987 and worked as such till 3-11-2008. The petitioner came to be placed under suspension *w.e.f.* 3-11-2008 and was eventually dismissed *w.e.f.* 5-4-2012 on false allegations and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). The dismissal letter was given to the petitioner on 7-4-2012.

3. The work and conduct of the petitioner was always upto the mark. He was the elected Vice President of the workers union.

4. It is further the averred case of the petitioner that the allegations leveled against him *vide* chargesheets dated 28-7-2008 and 8-9-2008 were totally false and baseless. The chargesheets were supplied to the petitioner only after the enquiry proceedings had started. Initially the company had leveled false allegations against certain persons *vide* a letter dated 9-7-2008. The names of some of the persons were deleted and those of the petitioner and other union leaders were retained just to create pressure upon them to compromise/withdraw the cases filed against the company. The workers had filed applications for increasing the retirement age from 55 years to 60 years. The company had filed SLP No. 9163/2008 before the Hon'ble Supreme Court of India, which was pending adjudication and the chargesheet thus had been issued to the petitioner and other union leaders to create pressure upon them to compromise the matter.

5. It is further the case of the petitioner that the enquiry officer Shri V. K. Gupta had fixed the enquiry on 15-11-2008 and no information had been given to the petitioner. He was only informed about the enquiry fixed on 15-11-2008. It is only on that date the petitioner came to know about the chargesheet dated 28-7-2008 and 8-9-2008. It was on the asking of the enquiry officer that the respondent had supplied the two chargesheets to the petitioner on 15-11-2008, which is stated to be totally illegal and against the basic principles of natural justice.

6. It is also the averred case of the petitioner that he never instructed any operator to stop working on the machines on 8-7-2008. The operators had never sat idle. The petitioner never went to the de-burring station and never threatened any worker to stop work. The petitioner has even denied that on 9-7-2008, he and other co-workers namely S/shri Dwarka Nath,

Arvind Singh and Harvinder had gheraoed the General Manager Operation-*cum*-Factory Manager and Dy. GM manufacturing and never distracted the staff members from operating the machines. The entire allegations in this behalf leveled by the management were stated to be baseless and just to harass and terminate the services of the petitioner.

7. It is also the averred case of the petitioner that an earlier domestic enquiry against Kulwant Kumar, Nirmal Singh and Prakash for submitting false medical claim was also unfair, improper and against the basic principles of natural justice. They had been dismissed from service illegally and without any credible proof. The workers union had never resorted to any strike on 8-7-2008 against their dismissal. The workers had requested the company to allow them to work in the factory. The workers were not allowed to work in the company *w.e.f.* 14-7-2008 to 31-10-2008. It is only on the intervention of the Labour Commissioner that the workers were allowed to resume the work. The dismissal of the three workers was also stated to be in violation of clause 17(3) of a settlement dated 2-6-2007.

8. The petitioner was allowed to enter the factory only on 3-11-2008 but after some hours he was placed under suspension.

9. Further per the petitioner the Labour Officer, Solan had never observed that the workers of the respondents were sitting idle and were not doing any work. In fact it was the management which did not allow the workers to work in the factory and had declared a lock-out, which is clear from the statements of one Rakesh Chand Sharma, Production Supervisor and Shri Agya Ram, Security Supervisor of the company. The workers had also made a complaint to the Labour Commissioner, who had prohibited the lock-out declared by the company. The reference had been sent to the Labour Court *vide* reference No. 58/2008 and the said reference had been partly up-held by the Hon'ble High Court and the company had agreed on a compromise and to pay a lump sum amount of 2,60,000/- and increase the salary by ` 7,672/-.

10. It is also averred by the petitioner that the enquiry officer has not conducted the enquiry fairly. No opportunity was afforded to the petitioner to defend his case. The enquiry was started on 1-11-2008 *i.e.* prior to the suspension of the petitioner and that too without intimation to him. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The enquiry officer chose not to write the exact words said by the witnesses. The enquiry officer has not given any reason for his findings. He had not supplied certain documents sought by the petitioner. The enquiry, as per the petitioner, is totally unfair and violative of the principles of natural justice. The permission sought by the management to dismiss the petitioner on the basis of the aforesaid enquiry is also illegal and beyond the fore-corners of law. The punishment of dismissal is also stated to be disproportionate. The permission granted by the Labour Court to dismiss the services of the petitioner without deciding reference No. 45/2008 is also not justified in the eyes of law.

11. The petitioner has denied that he has ever indulged in any sort of misconduct including threatening, assaulting, intimidating, insubordination, striking, instigating the workers to participate in a strike. As per the petitioner it was the management who had declared an illegal lock-out and for the said reason alone, the company had agreed to pay a lump sum amount to the workers in reference No. 58/2008. The charges leveled against the petitioner are false as none of the witnesses have supported the case of the management, as is clear from the statement of Shri Rakesh Sharma and Agya Ram Sharma.

12. The chargesheet dated 28-7-2008 does not talk about the incident dated 8-7-2008 and the chargesheet dated 8-9-2008 is stated to be an afterthought. The intention of the respondent company was mainly to victimize the union leaders including the petitioner.

13. It is thus the case of the petitioner that the action of the respondent management tantamount to unfair labour practice and the action of the respondent is violative of the provisions of Industrial Disputes Act and against the cardinal principles of natural justice. The petitioner is un-employed since 3-11-2008. It is thus prayed that the dismissal of the petitioner *w.e.f.* 5-4-2012 may be quashed and set aside. He may be reinstated in service with all consequential benefits. The suspension of the petitioner *w.e.f.* 3-11-2008 be also quashed and set aside and the petitioner be given full wages *w.e.f.* 3-11-2008 and the company be burdened with heavy damages amounting to ten lakhs.

14. While contesting the claim the respondents have *inter-alia* raised preliminary objections vis-à-vis maintainability and the petitioner having not approached this Court with clean hands. It is also averred that the reference is not maintainable as the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. Since, reference No. 58/2008 was pending adjudication an application under section 33(1) of the Act was moved to seek permission of the Court, which was granted *vide* order dated 31-3-2012. The punishment was stated to be commensurate with the misconduct of the petitioner.

15. On merits, it is the case of the respondents that the petitioner was issued chargesheets dated 28-7-2008 and 8-9-2008 and he was placed under suspension *w.e.f.* 1-11-2008 in terms of the provisions contained in the Certified Standing Orders of the respondent company. An enquiry in respect of the misconduct referred in the chargesheets was conducted against the petitioner in which he duly participated. The charges stand proved during the course of enquiry and thereupon permission was sought from the Labour Court under section 33 of the Act. He was eventually dismissed *w.e.f.* 5-4-2012. The action of the respondents is stated to be bonafide and as per the provisions of the Act and Certified Standing Orders of the respondent company. The respondents admitted that there was a union by the name and style of Gabriel Employees Union but the petitioner being elected Vice President of the union is denied for want of knowledge.

16. The charges levied against the petitioner in the two chargesheets are stated to be correct and as per the respondent, stand duly proved during the course of the enquiry. Per the respondents on 8-7-2008, the petitioner had questioned the General Manager Operations-*cum*-Factory Manager as to why the services of Kulwant Kumar had been terminated. The petitioner had threatened the General Manager to take back the said Kulwant Kumar into service, failing which the work in the factory would not be allowed. As per the respondent, the petitioner on the same date had instructed all the operators to stop working on the machines. The petitioner had also gone to the de-burring station and threatened the workers not to work. On account of such threats the work in the de-burring section also came to a halt. On 9-7-2008, too the petitioner and one Dwarka Nath, Arvind Singh, Girdhari Lal and Harvinder had stopped the work at the sinter line, leading to a strike.

17. It is further the case of the respondent that the petitioner was chargesheeted for misconduct under clauses 26-B(xvii), 26-B(iii) and 26-B (Li) of the Certified Standings Orders of the respondent company for threatening, assaulting, intermediating, misbehaving with the officers in the factory premises, inciting, participating, intimidating and coercing the employees to strike and stop work. Per the respondents the chargesheets dated 28-7-2008 and 8-9-2008 were sent to the petitioner but he refused to receive the same. He failed to file reply. During the course of the enquiry the reply to the chargesheets were filed by the petitioner. It is denied that

the copy of the chargesheets were not supplied to the petitioner. Per the respondents, he refused to receive the chargesheets. The enquiry officer was appointed *vide* letter dated 18-10-2008 and during the course of enquiry the chargesheets were duly provided to the petitioner and he filed the reply to the same. Per the respondents the procedure prescribed for disciplinary action under the Certified Standing Orders of the replying respondent was duly followed.

18. It is the case of the respondent management that the union had resorted to an illegal strike and the replying respondents had sent several communications to them to desist from the strike and to join duty but to no effect. The strike was prohibited by the Labour Commissioner and due intimation of the said was duly sent to the petitioner and the union, however, the workers did not resume duty. The workers had re-joined duty after giving an undertaking that they will work peacefully, maintain discipline and abide by the terms and conditions of the standing orders. The services of Kulwant Kumar, Nirmal Singh and Prakash were terminated in respect of submitting false and fabricated medi-claims.

19. Per the respondents the enquiry had been conducted as per the principles of natural justice and the Certified Standing Orders of the replying respondent. A fair hearing was afforded to the petitioner. The petitioner cross-examined the management witnesses and also examined his witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copy of day to day proceedings of the enquiry. The enquiry officer had given a detailed and reasoned enquiry report. The enquiry report was also supplied to the petitioner with second show cause notice and a reply had been duly filed for the same by the petitioner. The rest of the contentions in the claim petition were denied. It is thus prayed that the petition be dismissed, being devoid of merits.

20. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

21. I notice that on 16-5-2014, the following preliminary issue came to be framed by my Learned Predecessor:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP*.

2. Relief:

22. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:

Issue No. 1 No. However, the punishment imposed by the disciplinary authority is disproportionate.

Relief: Consequently, the reference is partly answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

24. A preliminary issue had come to be framed by my learned Predecessor on 16-5-2014 as to whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice. The case propounded by the petitioner, however in brief was that

the chargesheets dated 28-7-2008 and 8-9-2008 were not only false and baseless but were supplied to the petitioner only after the enquiry proceedings had commenced. It is also the case of the petitioner that the enquiry officer so appointed by the respondent management had fixed the enquiry on 1-11-2008 and information had been given to the petitioner. He was only informed about the enquiry on 15-11-2008. He came to know about the chargesheets after 15-11-2008 only.

25. It is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry fairly. The petitioner had not been afforded proper opportunity to defend his case. The defence of the petitioner was totally ignored. The enquiry officer did not explain anything to the petitioner about the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his choice and as per the directions of the management. Though, the petitioner participated in the enquiry but he was not allowed to submit his defence in a proper manner while cross-examining the witnesses. The documents have not been supplied to the petitioner. The enquiry officer chose not to write the exact words of the witnesses. The enquiry officer had not recorded any reasons to substantiate his findings. The enquiry conducted by the enquiry officer was thus stated to be totally unfair and against the principles of natural justice and the punishment of dismissal was also stated to be disproportionate.

26. On the allegations made in the two chargesheets the petitioner denied having instigated or coerced the workers from resorting to stoppage of work or threatening, assaulting, intermediating, misbehaving or inciting the employees to go on strike on 8-7-2008 and 9-7-2008. As per the petitioner the intention of the respondent company was to victimize the union leaders including the petitioner and to terminate them from service.

27. Per contra it is the case of the respondent that the enquiry has been conducted as per the principles of natural justice and the Certified Standing Orders and the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. The chargesheets have been duly sent to the petitioner but he refused to receive the same. During the course of enquiry the petitioner had filed reply to the chargesheets. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The petitioner cross-examined the management witnesses. He was duly assisted by his co-worker in the domestic enquiry. Each and every day proceedings have been duly signed by him. He was given the copies of day to day proceedings of the enquiry. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

28. The petitioner while appearing as his own witness as PW-1 has reiterated the averments made in the statement of claim. He has placed on record the letter of dismissal dated 5-4-2012 *vide* Ex. P-1 and various letters granting him increments and appreciations *vide* Ex. P-2 to Ex. P-19. Certificates earned by the petitioner have been placed on record as Ex. P-20 to Ex. P-25. He has placed on record notice dated 09-07-2008 Ex. P-26 and corrigendum dated 10-7-2008 Ex. P-27, suspension letter Ex.P-28, copy of the affidavit filed by Shri Rakesh Chand Sharma and Agya Ram Sharma as Ex. P-29 and Ex. P-30 respectively. He has also placed on record order dated 18-12-12 passed by the Hon'ble High Court in CWP No. 4175/2012 Ex. P-31, demand notice under section 2-A Ex. P-32.

29. In his cross-examination the petitioner has denied that the chargesheet Mark R-1 was sent to him on his residential address prior to the inquiry. He however admit that the same was supplied to him on 15-11-2008 and he had filed reply to the same *vide* Ex. RX-2.

30. It further transpires from his testimony that the petitioner had appeared before the enquiry officer on 15-11-2008**,** though he was not present on the first day *i.e.* on 1-11-2008. The petitioner has himself admitted that he was supplied the chargesheets and its Hindi version for the first time on 15-11-2008. He has also admitted his signatures on the enquiry proceedings of 15-11-2008. Again a chargesheet alongwith Hindi translations were again supplied to the petitioner apparently the earlier copies were not legible. On 27-2-2009, the statement of witnesses of the management were supplied to the petitioner. He has also admitted that on the objection of the management representative the enquiry officer had asked him to show the relevancy of the documents demanded by him. On 11-5-2009, the of the certified standing orders was also supplied to the petitioner. The co-worker of the petitioner Shri Arvind Singh started representing the petitioner in the enquiry and he even cross-examined the four witnesses of the management. On 4-5-2009 Mr. Haider Ali appeard on his behalf is admitted by the petitioner that the cross-examination of the management witnesses bears his signatures and those of the co-worker Shri Arvind Singh. He had also submitted written arguments *vide* Ex. RX- 23.

31. He has also admitted in his deposition that he had filed the statement of his witnesses S/Shri Harbhajan Singh, and Harjinder Singh. The petitioner had been admittedly cross-examined on 9-6-2009 and the same bear his signature *vide* Ex.RX-22.

32. It further transpires from the testimony of the petitioner that the respondent company had issued a letter dated 23-07-2009 *vide* Ex. RX-24 alongwith enquiry report (Ex. RX-25). The petitioner has also admitted that he has filed reply to the same *vide* Ex. RX-26.

33. The petitioner has also examined one Shri Arvind Singh as PW-2. The said witness was the defence assistant/co-worker in the enquiry of the petitioner. Per him the enquiry officer had not explained any procedure to him at the beginning of the enquiry. The enquiry officer did not record the questions put by the defence assistant. He used to write the answer as per his choice. Per this witness the documents demanded by him from the management were also not supplied to him. Certain questions put by him were dis-allowed by the enquiry officer. Per the witness the enquiry was not conducted in a proper and fair manner and the enquiry officer had not followed the principles of natural justice. It is however admitted by the witness that he appeared in the enquiry proceedings for the first time on 11-5-2009. He has admitted cross-examining the witnesses of the management. The questions which were disallowed are already stated to have been recorded in the enquiry proceedings. The witness has admitted that no application in writing was filed by him regarding the disallowing of the questions. He has also admitted that the petitioner had examined his defence witnesses and even the petitioner was cross-examined on 09-6-2009. He has admitted that written arguments were submitted to the enquiry officer on 25-6-2009. He has also admitted that the copies of the day to day enquiry proceedings and the statement of all witnesses were supplied to them and the entire enquiry proceedings were recorded in his presence.

34. The petitioner further examined four witnesses namely Shri Harbhajan Singh (PW-5) and Sh. Harjinder Singh (PW-6) to portray that on 8-7-2008 the petitioner and the other union members had not stopped any other worker from doing their work in the factory or the sinter line.

35. The petitioner has further examined one Shri Rakesh Chand, Production Supervisor (PW-3), Shri Agya Ram, Security Supervisor (PW-4), to contend that they had filed statements before this Court and the petitioner and other workers had never threatened any worker to stop the work *vide* Ex. PW-3/A and Ex. PW-4/A respectively. The allegations against them were totally false. Even on 9-7-2008, the petitioner and other workers never led a mob of workers in sinter line department and did not Gherao the General Manager.

36. The respondents on the other hand have examined Shri Balwinder Singh, Co-ordinator HR as RW-1 who has reiterated the averments made in the reply in his affidavit Ex. RW-1/A. Apart from other documents he has placed on record the enquiry report pertaining to three workers S/Shri Kulwant Kumar, Prakash Singh and Nirmal Singh, because of whose termination the petitioner and the workers had stopped work. The said witness was also the presenting officer or the management representative before the enquiry officer. In his cross-examination he has admitted that the petitioner was the Vice president of the union and his conduct during his entire service was good. He has admitted that the workers union had given an application before the Certifying Officer to increase the retirement age of workers from 55 years to 60 years in the year 1998 and the matter went up till the Hon'ble Supreme Court and was eventually decided in favour of the workers.

37. The respondents have also examined the enquiry officer Shri V. K. Gupta as RW-2. Per him he had intimated the date of enquiry to the petitioner *vide* registered letter dated 21-10-2008. The petitioner was not present on that day as such letter dated 1-11-2008 was issued to the petitioner intimating him the next date as 15-11-2008. On 15-11-2008 the petitioner was present. The chargesheets dated 28-7-2008 and 8-9-2008 alongwith documents were handed over to the petitioner. The management was asked to submit additional documents, if any, alongwith the list of witnesses on the next day *i.e.* 21-2-2008. On that day the petitioner has sought legible copies of chargesheets which were duly given to him alongwith Hindi translations. On 16-12-2008 the enquiry was adjourned at the request of the petitioner. On 16-1-2009 the petitioner had prayed that the enquiry proceedings be deferred in view of the reference Nos. 45/2008 and 58/2008. The petitioner was asked to provide the copy of the stay order. However, he could not produce the same. Certain documents were filed by the presenting officer, copies of the same were also supplied to the petitioner. The petitioner requested for a date for cross-examination. On 11-5-2009 the petitioner asked for certain documents, the relevancy which were objected to by the presenting officer. Eventually on 23-5-2009 for the first time co-worker of the petitioner namely Shri Arvind Singh appeared and the witnesses of the management were cross-examined. The list of questions which were disallowed in the cross-examination of MW-3 were marked. The day to day proceedings were duly signed by the petitioner, co-worker and the presenting officer. Though on 4-5-2009 Haider Ali had also appeared for the petitioner. On 09-6-2009 the statement of the petitioner was recorded. The other witnesses of the management were also examined. The written submissions were submitted by the petitioner and enquiry proceedings dated 25-6-2009 was given to the petitioner. As per his witness due opportunity was afforded to the petitioner to put forth his case and cross-examine the witnesses of the management. The petitioner never objected to the witness being appointed as an enquiry officer. The enquiry has been done in a just, fair and impartial manner.

38. The witness has denied that he had not explained the procedure to be adopted in the enquiry, though he admitted that he had not mentioned the same in the enquiry proceedings. He has admitted that there is no reference regarding providing the services of a defence assistant to the petitioner *w.e.f.* 15-11-2008 to 25-6-2009. Per this witness the petitioner had never asked for the services of a defence assistant. He has admitted that his father was a labour law advisor of Gabriel India Ltd. Per this witness he had only disallowed irrelevant questions and he had also recorded the reasons for disallowing the questions. He has admitted that for certain questions the reasons for disallowance has not been written.

39. The respondent management has literally placed on record the entire proceedings of the enquiry starting from chargesheet Mark R-1 to the enquiry report Ex. RX-25. So much so even the day to day proceedings conducted by the enquiry officer have been placed on recorded starting from 15-11-2008 till 25-6-2009 Ex. R-25. The respondents have also placed on record the Certified Standing Orders Ex. RX-28 and placed on record the permission granted by this Court for dismissing the services of the respondent Ex. RX-3.

40. Much was urged by the learned counsel for the petitioner that the petitioner was placed under suspension for the charges referred in letter dated 28-7-2008 but enquiry was conducted in respect of the charges not only relating to the letter dated 28-7-2008 but also those reflected in the letter dated 8-9-2008. The copy of the chargesheet was never supplied to the petitioner. It was only on 15-11-2008 that the chargesheet was supplied to the petitioner for the first time. The enquiry officer too did not explain the procedure to be adopted. He did not allow the services of defence assistant to the petitioner. Not only this, the enquiry officer did not allowed the application of the petitioner demanding certain documents. The questions put by the petitioner were also rejected by the enquiry officer. He would further contend that there was totally non application of mind and even while recording the reasons in support of his findings the enquiry officer had not given any reasons whatsoever.

41. Per contra it is the contention of the learned counsel for the respondent that the petitioner was afforded all possible opportunity to put his case. He had appeared in all the proceedings. The day to day proceedings had been signed by him and were duly supplied to him. Shri Arvind Singh appeared as a defence assistant on 11-5-2009 and only thereafter the management witnesses had been examined. The petitioner being the no information had been given to the petitioner. Vice president of the union was not a novice. He was rather defended by a defence assistant and as such no prejudice has been caused to him. The enquiry proceedings have been conducted in fair, just and impartial manner and no fault can be attributed on this count.

42. The conjoint reading of the deposition of the parties and the overwhelming documentary evidence on record, does show that all procedural safe cards had been deployed by the respondent while conducting the domestic enquiry against the petitioner. A presumption in law thus does arises that the copy of the chargesheet apparently had been sent to the petitioner but he refused to receive the same. The same is not disputed. In fact the petitioner had filed reply to the same. The proceedings of the enquiry starting from 15-11-2008 to 25-06-2009 does show that the petitioner had appeared on each and every day when effective orders were passed. His signatures bears testimony to the said fact and so does the signatures of defence assistant after 2-5-2009. In all fairness both the petitioner and defence assistant have admitted that they were supplied the day to day proceedings by the enquiry officer. The day to day proceedings do show that the adjournments were also granted at the asking of the petitioner as is clear from the order dated 04-5-2009 passed by the enquiry officer in the presence of the defence assistant. On 11-5-2009 the defence assistant had cross-examined management witnesses. The proceedings also bear the signatures of both the petitioner and the defence assistant. The testimony of RW-2 is duly corroborated by the documentary evidence placed on record vide Ex. RW-2/B-1 to Ex. RW-2/B-9.

43. The learned counsel for the petitioner thus further contend that the enquiry is vitiated for non-furnishing of documents and more so on the demand having been made by the delinquent. In this behalf he placed reliance of the judgment of Hon'ble High Court of Orisa titled as Management of State Bank of India *Vs.* Presiding Officer, Industrial Tribunal Orisa and Anr. (2014) LLR 1151. It is no doubt trite that non-furnishing of documents tends to vitiate the enquiry but in the case in hand the petitioner had sought certain documents regarding which an objection has been raised by the presenting officer *vis-a-vis* its relevancy to the dispute. There is nothing on record to show that as to what documents were sought and as to what was the prejudice caused to the petitioner in this behalf. The copy of the Standing Orders was however made available to the petitioner on his asking as is clear from the enquiry proceedings on record. There is no specific averment as to what documents were sought.

44. The learned counsel also sought to impeach the veracity of the enquiry proceedings on the ground that the enquiry officer was biased as his father was the advisor/Advocate for the management. In this behalf he has placed reliance upon the judgment of Hon'ble High Court of Delhi titled as **Tajmahal Hotel** Vs. **Industrial Tribunal-1 Government of NCT of Delhi and Ors. (2015) LLR 1129**. To counter the aforesaid objection the learned counsel for the respondent placed reliance upon the judgment of the Hon'ble Supreme Court titled as **M/s Dalmia Dadri Cement Ltd.** Vs. **Shri Murari Lal Bikaneria (1970) 3 SCC 259 and South India Cashew Factories Workers Union** Vs. **Kerla State Cashew Development** to contend that conducting of an enquiry by an officer of the management also *ipso facto* does not vitiate the enquiry and merely because the enquiry officer was an Advocate and had on occasions being engaged by the management did not render him in competent to hold a domestic enquiry. In the case in hand the father of the enquiry officer (RW-2) was the labour law advisor of the company and even he had been working as an enquiry officer with the company for a long time. Admittedly, in the case in hand no objection had been raised to the appointment of the enquiry officer and as held in **H.V Nirmala** Vs. **Karnatka State Financial Corporation (2008) 7 SCC 639** objection having not been raised to the appointment of an enquiry officer during the enquiry proceedings, the charged employee is deemed to have waived off the objection. Having participated in the enquiry proceedings without any demur whatsoever, witnesses having been cross-examined, the charged officer cannot now turn back and allege that prejudice has been caused by the reason of appointment of a legal officer as an enquiry officer. The same principle will apply in the case in hand. Even otherwise going by the ratio laid down by the Hon'ble Supreme Court discussed hereinabove it cannot be said that the appointment of RW-2 *ipso facto* is not sufficient to vitiate the entire enquiry.

45. Till the recording of the findings is concerned reasonable opportunity has been afforded to the petitioner and so have been the principles of natural justice been followed. The initiation of chargesheet and proving the allegations therein have been done in a manner which are in consonance with the provisions of Certified Standing Orders of the respondent company as reflected in Ex. RX-28. The principles of natural justice also have seemingly been complied. As discussed above nothing much was elicited from the documents or the evidence on record to impeach the veracity of the proceedings *vis-à-vis* grant of fair opportunity and the non- compliance of the principles of natural justice. The enquiry proceedings, however culminate with the imposition of penalty holding a person guilty and by way of filling of enquiry report is the first right. The second right however to plead for either no penalty or lesser penalty or even in the conclusion that the guilt stand accepted. This second right is exercisable at the second stage and the second stage consists of the issuance of notice to show cause against the proposed penalty and considering the reply to the notice and deciding upon the penalty.

46. The consideration of the findings recorded by an enquiry officer form an important and material stand before the disciplinary authority. It is incumbent upon the disciplinary authority to consider the report of the enquiry officer and the conclusion reached by him. If such a finding is to be one of the document to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is indeed a negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like an enquiry officer without giving the employee an opportunity to reply to it. As such the disciplinary authority is required to consider the evidence, report of the enquiry officer and the representation of the employee against it before imposing penalty, higher penalty would be the onus of this count. The case in hand pertains to dismissal.

47. Having said so, the perusal of the judgment titled as **Associate Cement Company Ltd.** Vs. **T. C. Shrivashva and others 1984 (Supp.) SCC 87**, however shows that unless the

certified standing orders provide for a 2nd show cause notice on the proposed punishment is not a condition precedent for imposing punishment. As per the judgment no enquiry which is otherwise fair and valid will be vitiated by non-offering of such second opportunity.

48. While testing the factual back-ground in the back-ground of the principles set out hereinabove it transpires that the respondent had on 23rd July, 2009 vide Ex. RX-24 sent written communication to the petitioner seeking comments, if any, on the findings of the enquiry officer. The enquiry report Ex. RX-25 had also been sent alongwith. The petitioner had also replied to the same *vide* Ex. RX-23.

49. Looking at the Certified Standing Orders of the respondent company, which has been placed on record as Ex. RX-28, the procedure for disciplinary action has been enunciated in para 26 which reads as follows:

"26. Procedure for disciplinary action:

Where the allegation of misconduct against any worker is reported or otherwise come to the notice of the management/manager a chargesheet in writing specifying the substance of allegations shall be given to the workman concerned requiring him to submit his written explanation within stipulated time which shall not be less than 48 hours. If an "workman refuses to receive the charge sheet, at least in the presence of any other workman, a copy of the chargesheet shall be sent to him by registered post under postal certificate and copy exhibited on the Notice Board. This shall be treated as sufficient evidence of the chargesheet having been served on the delinquent employee.

If the employee fails to submit his explanation within stipulated time, without any sufficient cause being shown, it will be presumed that he has no explanation to offer and action will proceed in the absence of any explanation. On receipt of the explanation, if it is found to be satisfactorily, the matter will be closed, otherwise a regular domestic enquiry will be held by the Manager or his nominee, wherein the workman shall be given reasonable opportunity to defend himself. The management/ manager shall be fully competent to appoint any other outsider as an enquiry officer if they so like. The delinquent workman shall be allowed to be represented assisted by any co-worker employed in the factory or representative as per section 36 of the Industrial Disputes Act, 1947. The charge sheeted employee shall be bound to present himself before the enquiry officer personally. If he fails to do so on the first appointed date, the enquiry officer may adjourn the proceedings to give him sufficient opportunity or may proceed *ex-parte* at this discretion. In case an employee does not present on the adjourned date, it will be a sufficient reason for the enquiry officer to presume that the delinquent employee was deliberately avoiding the participation in the enquiry and to proceed *ex-parte*."

Para 27-A of the Standing Orders further provide the punishment which may be awarded to a workman and the same reads as follow:

27-A depending upon the severity of the misconduct, the punishment awarded to a workman may be any of the following:

1. Dismissal

2. Discharge

3. Suspension

4. Warning/censure

5. Stoppage of annual increment not exceeding two increments

6. Demotion to the next lower grade

50. The reading of para 27-A shows that it does not provide for a second opportunity to be granted to the delinquent. No requirement has been envisaged in the standing orders to giving the delinquent any opportunity to offer any explanation. In the case in hand the respondents had afforded opportunity to the petitioner to offer comments in respect of the findings recorded by the enquiry officer within five days and the copy of the enquiry report Ex. R-25 had also been supplied along-with.

51. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Associate Cement Company Ltd. *Vs.* T.C. Shrivastva and others discussed hereinabove *supra*, it is clear that the plain reading of the standing orders read as a whole does not warrant an assumption that second show cause notice had to be issued to the petitioner. It cannot thus be said that the enquiry was even vitiated on this count too.

52. For all the reasons detailed hereinabove this Court is constrained to hold that the departmental enquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice much less prejudice *de-facto*. In the case in hand the petitioner has failed to prove the violation of the mandatory and statutory Rules which would have tantamounted to prejudice. The infringement of Rules which are merely directory in nature the element of de-facto prejudice had to be pleaded and shown, which has not been done in the case in hand. The onus was on the petitioner to have shown the grounds resulting in de-facto prejudice and that he had been put to a disadvantage thereof, which has not been done. In this behalf support can be ably drawn from the judgment of Hon'ble Supreme Court titled as **Union of India** Vs. **Alok Kumar (2010) 5 SCC 349.**

53. However, the standing orders of the respondent company Ex. RX-28 though totally silent on the issuance of a 2nd show cause notice does talk of the action to be taken by a disciplinary authority in case of sexual harassment but not relating to imposition of major penalty, like dismissal from service. However, Rule 27-A of the standing orders provide for punishments ranging from dismissal to censure and stoppage of increments. Even, if the respondent was not obligated to issue a show cause for the proposed punishment, the respondent management was duty bound to have considered the nature of charges and its gravity, particularly keeping in view the fact that no past misconduct has been relied upon by the respondent/company. These facts had to be taken in to consideration by the disciplinary authority. To this limited extent the breach of principles of natural justice was itself a prejudice and no other "de-facto" prejudice was required to be proved.

54. The gravamen of the allegation in the chargesheet are that the petitioner and the other workmen had on 8-7-2008 and 9-7-2008 gheraoed the General manager and stopped workers from working on the machines at the production unit and threatened them with dire consequences in case they did not stop work. Admittedly, the petitioner was the President of the union and the other workmen who have been dismissed were also the leaders of the union. The witnesses of the management examined by the enquiry officer *i.e.* MW-1/1 Neeraj Gupta, MW-1 Deep Ram, Assistant Manager, (Production) and MW-3/1 D. K. Shrama, DGM, have stated that certain workmen had come and stopped work in the de-burring section and the sinter line.

Though, undoubtedly all the witnesses have deposed that the petitioner was leading the workers, but the fact remains that admittedly he was also the president of the union. Except from the threat of lying prostrate on the machines nothing else has been attributed to the workmen. There is no evidence that any collateral damage was done to the machines or the factory. All the witnesses have admitted that there was a strike/lock-out in the factory and the workers had resumed the work only after the Labour Commissioner had passed an order to this effect. Even as per the affidavit filed by RW-1 Shri Balwinder Singh, HR Co-ordinator there was strike at 10.00 AM on 8-7-2008. Per him the strike continued from 8-7-2008 till 30-7-2008. The strike had been prohibited by the Labour Commissioner on 31-7-2008 and the workers had resumed duties only thereafter.

55. It is thus clear that whatever had happened on 8-7-2008 and 9-7-2008 was apparently in view of the dispute having arisen between the management and the workers union. Oblivious of the fact that no notice was required to be issued to the petitioner and other workmen as per the Standing Orders before dismissing them, it was still incumbent upon the disciplinary authority to have taken into consideration the gravity of the misconduct, the previous record of the workmen and any other extenuating or aggravating circumstance at the time of the passing of the order of dismissal. RW-1 Shri Balwinder Singh who is not only the HR Coordinator but also the presenting officer has admitted that the conduct of the petitioner was good throughout. Moreover, the respondent had not notified to the petitioner or the other workmen anything about his past record in the show cause notice. There is nothing on record to remotely suggest as to what led the disciplinary authority to the imposition of the major or extreme penalty of dismissal. As per clause 27-A apart from dismissal there are other punishments provided even for major misconduct.

56. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra** Vs. **State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd.** Vs. **Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

57. The facts narrated and discussed hereinabove clearly show that not only have the witnesses only partially supported the case of the workman in the enquiry proceedings but even the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. The factum that the strike had already ensued on 8-7-2008 itself, and the workers were the President and the office bearers of the union did not also weigh with the disciplinary authority, what to say about the past conduct of the petitioner and other workmen. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

58. Thus while holding that the respondents have conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove *supra*, has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in

view the totality of circumstances discussed hereinabove, in such a situation with holding of two increments with cumulative effect will be more than adequate punishment for such an employee. The issue is decided accordingly.

Relief :

As a sequel the reference is partly allowed while holding that the respondents have conducted the enquiry in a fair manner and as per the provisions of the Act and the Certified Standing Orders, the penalty imposed by the respondent management is held to be disproportionate and is consequently quashed and set aside. The petitioner is ordered to be re-instated in service. He shall be entitled to seniority and continuity from the date of his dismissal, however, without any back-wages but his two increments shall be withheld as directed above. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today this 23rd day of April, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref. No. 42 of 2009

Instituted on 15-6-2009

Decided on 6-4-2019

Ram Lal s/o Shri Mathu Ram r/o Village Chaiwan, P.O. Kakarhati, Tehsil & District Solan, H.P. through J.C Bhardwaj, President HPAITUC, HQ Saproon, Solan, HP. . .*Petitioner.*

The Solan District Co-operative Marketing & Federation Ltd. Saproon 173211, District Solan, H.P., through its Manager. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Bharat Thakur, Advocate.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Shri Ram Lal s/o Shri Mathu Ram Salesman w.e.f. 16-5-2007 by the Manager. The Solan District Co-operative marketing and Consumer Federation Ltd. Saproon District Solan, HP without holding any enquiry

and without complying with the orders dated 11-8-2005 passed by the Deputy Registrar, Co-operative Socities, Estern Division, Shimla H.P. is legal and justified? If not, what back-wages, seniority, service benefits and relief Shri Ram Lal S/o Shri Mathu Ram, Salesman is entitled to?"

2. In pursuance to the aforesaid reference, it is the averred case of the petitioner that he came to be appointed as an Assistant Salesman in the respondent federation in August 1999 and later came to be promoted as a salesman and continued working as such till his illegal termination on 31-3-2005. The petitioner came to be chargesheeted on 27-1-2005 for alleged misappropriation of funds of the Federation. While filing reply to the chargesheet on 3-2-2005 he had denied all the charges and on 31-3-2005 without holding any proper enquiry his services came to be terminated.

3. It is further averred by the petitioner that during the said interregnum he had challenged his termination before the Deputy Registrar Co-operative Societies who had granted interim directions on 3-5-2005 staying the operation of the termination order dated 31-3-2005. He had submitted his joining report on 6-5-2005, but, he was not allowed to resume duty. Eventually on 11-8-2005 the order of termination was quashed and set aside by the Deputy Registrar. The respondent federation was directed to reinstate the petitioner and initiate fresh enquiry against him while affording due opportunity of hearing to him. The petitioner again submitted his joining report to the Manager of the federation on 27-8-2005, but to no avail.

4. The federation preferred a review/revision against the order of the Deputy Registrar which also came to be dismissed on 30-11-2006. Per the petitioner even thereafter no fresh enquiry was conducted nor any opportunity was afforded to the petitioner. On the contrary, on 19-4-2007 a fresh memorandum was issued to the petitioner in which the Board of Directors had tentatively decided to impose the punishment of dismissal from service on the petitioner *w.e.f.* 31-3-2005. The Manager had asked the petitioner to submit his representation if any, against the punishment within seven days from 19-4-2007, failing which it shall be presumed that the petitioner has nothing to say. The petitioner had filed reply to the same on 21-4-2007 and had again requested the respondent to conduct fresh enquiry on each article of charges by affording him opportunity to explain his position as per order dated 11-8-2005 passed by the Deputy Registrar Co-operative Societies. In-spite of the representation the petitioner was ordered to be dismissed *w.e.f.* 16-5-2007.

5. It is further averred by the petitioner that the Manager of the federation had also lodged an FIR at Police Station, Solan against the petitioner for misappropriation of ₹ 49,018/-, which is stated to be contrary to the amount mentioned in the chargesheet. The Manager of the federation is further stated to have recovered ` 1,31,645/- without proving any facts on record. An amount of ` 82,687/- was access and had been extracted from the petitioner by luring him that he will be reinstated in service.

6. The petitioner has further averred that he had approached the Registrar Co-operative societies under section 72 of the HP Co-operative Societies Act. However, his petition was dismissed as being time barred and not maintainable. An appeal thereof came to be dismissed on 2-1-2008. A review petition filed under section 94 of the H.P. Co-operative Societies Act against the order dated 2-1-2008 was disposed off by the Joint Secretary, Co-operation, allowing the petitioner to withdraw the appeal with liberty to approach the appropriate forum and hence the present reference.

7. The petitioner thus contends that his termination is not only violative of the provisions of the Industrial Disputes Act, more particularly section 25-F, but his services have

been terminated without holding any enquiry and as such is nonest in the eyes of law. He thus prays that the illegal order of termination dated 31-3-2005 be set aside and quashed and he be reinstated in service with all consequential benefits.

8. While contesting the claim, the respondent has merely raised preliminary objections. It is denied that there was any relationship of an employer and an employee interse the parties. It is also the contention of the respondent that the dispute was initially raised against the respondent in his individual capacity and has not been raised against the Solan District Marketing Federation Ltd. Solan, the conciliation proceedings and the reference is thus stated to be bad for non-impleadment of necessary parties. The claim is stated to be invariance with the demand notice and as such bad in the eyes of law. Per the respondent there exists no "industrial dispute" under section 2(k) nor is the termination of the petitioner falling under "retrenchment" under section 2(oo) of the Act. Per the respondent the petitioner had once opted to choose the statutory remedy available under the H.P. Co-operative Societies Act, and as such this Court/Tribunal has no jurisdiction to entertain the lis.

9. On 21st September 2011 the reference had came to be decided in favour of the petitioner. The respondent federation had carried the same to the Hon'ble High Court by filling CWP No. 11482 of 2011. The reference has thus been remanded back to this Court with a direction to implead the Solan District Co-operative marketing and Consumer Federation Ltd., Solan as respondent No. 4 and to decide the matter afresh. The newly added respondent was allowed liberty to lead evidence either oral or documentary. The orders of the Hon'ble Single Judge have been further affirmed in LPA No. 337 of 2012 decided on 7-8-2012.

10. On notice having been issued for 4-9-2012 after remand the federation had filed a reply. In the reply rather than controverting the submissions made in the claim it was stated by the federation that an LPA has been filed before the Hon'ble High Court. The copy of the LPA be read as part and parcel of the reply. As per the federation the clear cut stand of the respondent in the LPA was that the reference was invalid, the H.P. Co-operative Societies Act has an overriding effect and as such the provisions of the Industrial Disputes Act would not apply, resulting in the ouster of the jurisdiction of this Court. The petitioner having chosen a remedy under section 72 of the H.P. Co-operative Societies Act, he cannot turn around to claim himself as "workman" under the provisions of the Industrial Disputes Act and that the termination of the petitioner was hit by the provisions of the Limitation Act. The federation also adopted the stand taken by the Manager before the Conciliation Officer.

11. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I noticed that apart from issues framed earlier on 19-11-2009, additional issues came to be framed on 6-10-2018, being issues 4(a) and 4(b), by my Learned Predecessor which reads as under:

1. Whether the termination of the services of the petitioner by the respondent without holding any enquiry and without complying with the order dated 11-8-2005 passed by the Deputy Registrar, Co-operative Societies, Eastern Division, Shimla, H.P. is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved to what back wages, seniority, service benefits and relief the petitioner is entitled to? . .*OPP.*

3. Whether there is no relationship of employee and employer between the parties as alleged? . .*OPR.*

4. Whether the claim is not maintainable? . .*OPR.*

4(a). Whether the claim of the petitioner is barred by limitation as alleged? . .*OPR.*

4(b). Whether the claim of the petitioner is barred by resjudicata as alleged? . .*OPR.*

5. Relief:

13. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No.1 :	Yes
Issue No. 2 :	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3 :	No
Issue No. 4 :	No
Issue No. 4(a) :	No
Issue No. 4(b) :	No
Relief:	Reference answered partly in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS.

Issues No. 4(A) & 4(B) :

14. Both the issues are being taken up together for discussion as they have been framed subsequently after remand on 6-10-2018.

15. No doubt the issues had been framed in pursuance to the remand by the Hon'ble High Court, but, apparently the two issues were not germane to the lis as they have never been raised by the respondent. While filing reply to the notice issued on 4-9-2012, after remand, the newly added respondent (respondent No. 4) in their wisdom only brought it to the notice of this Court that a LPA has been filed before the Hon'ble High Court against the orders passed by the Hon'ble Single Judge on 16-5-2012 and the respondent had further notified the clear cut stand taken by the respondent before the Hon'ble High Court in the LPA. In the first place the issues were not required to be framed, as they were the issues which had been espoused by the respondent before the Hon'ble High Court in the LPA.

16. It further transpires from record that no reply has been filed by the respondent on merits either before or after remand. The only issue raised while filing reply was that the respondent federation had not been impleaded as a party and the Manager had been impleaded in his individual capacity and as such the proceedings initiated by the Conciliation Officer and the reference were bad in the eyes of law. The petitioner had mischievously omitted to name the federation as the respondent. The question of limitation and resjudicata has never been raised by the respondents in their reply before this Court. These issues were raised before the Hon'ble High Court in the LPA only.

17. The issues which were raised by the respondent *vis-à-vis* limitation and use already stand over-ruled by the Hon'ble High Court by virtue of the orders passed in LPA No. 337 of 2012. Even otherwise the respondents themselves have averred in the written arguments that issue No. 4(a) has been rendered superfluous and is not pressed by the federation. The question of resjudicata apparently is not liable to be raised, having not been raised in the pleadings. The question as to whether the petitioner was to seek relief under the H.P. Co-operative Societies Act or the Industrial Disputes Act shall be considered separately.

18. In view of the discussion hereinabove both the issues are decided against the respondents and in favour of the petitioner.

Issue No. 1 :

19. Admittedly, the Deputy Registrar Co-operative Societies had set aside the order of termination dated 31-3-2015. After the quashing the same it had been directed that a fresh enquiry on each article of charges be instituted after affording due opportunity to the petitioner as is abundantly clear from the judgment, (Mark R-4 and Ex. P-7) placed on record. The respondents have preferred a review/revision which also came to be dismissed on 30-11-2006 *vide* mark R-6.

20. After the passing of the aforesaid order the respondent on 19-4-2007 *vide* Ex. RW-2/E straightway proceeded to issue a notice to the petitioner regarding imposition of punishment of dismissal from service *w.e.f.* 31-3-2005. The respondents also enclosed the report of the enquiring authority dated 15-3-2005. The petitioner was asked to submit his representation, if any, against the proposed punishment within seven days from 19-4-2007. The notice was sent *vide* Ex. RW-2/E. The petitioner replied to the aforesaid representation *vide* mark R-8. On 16-5-2007 the petitioner eventually came to be dismissed *vide* mark R-10 on record.

21. The petitioner had approached the Registrar, Co-operation under section 72 (mark R-11). The petition having been held to be not maintainable the petitioner filed a review/revision under section 94 the same was also dismissed, however, with liberty to the petitioner to approach the appropriate forum for appropriate remedy. The request was allowed and the case was allowed to be dismissed as withdrawn with liberty to approach the appropriate forum *vide* mark R-12.

22. The petitioner while appearing as his own witness, after remand has placed on record the memorandum and the statement of charges submitted against him *vide* Ex. P-1. However, the same came to be quashed by the Deputy Registrar Co-operation (Mark R-4 and Ex. P-7), with the specific direction that a fresh enquiry on each article of charge be instituted against the petitioner after affording him due opportunity. That direction was never followed or complied with. On 19-4-2007 (Ex. RW-2/E and even Ex. P-18), the respondents on the basis of the earlier findings proceeded to issue a notice proposing dismissal as a punishment to the petitioner. Admittedly during this period no enquiry or proceedings of any nature were initiated by the respondent. Seemingly, the enquiry officer Shri Hem Shankar who has appeared as RW-3, based upon an apology letter written by the petitioner Mark R-3 proceed to indict the petitioner *vide* enquiry report Ex. RW-2/B. He has admitted in his cross-examination that he has not recorded the statement of any witness of the federation nor the petitioner. The enquiry report apparently was based upon the apology letter mark R-3 alone. So much so, there is nothing on record to remotely suggest that the petitioner was even heard on the quantum of sentence, more particularly keeping in view the fact that the proposed punishment was nothing else but dismissal.

23. RW-2 Shri Shashikant Sharma, the Manager of the federation has also testified that the enquiry officer had submitted his report Ex. RW-2/B, keeping in view the reply dated 15-3-2005 (mark R-3) filed by the petitioner and based on the same the services of the petitioner were terminated on 31-3-2005 *vide* Ex. RW-2/T. He admits that the termination was set aside by the Deputy Registrar, Co-operative Societies. Rather than initiating a fresh enquiry, as directed by the Deputy Registrar the respondents proceeded to issue notice for imposing the proposed punishment *vide* Ex. RW-2/E dated 9-4-2007. Based on the aforesaid the services of the petitioner were terminated.

24. It is by now fairly well settled that there is a statutory requirement to conduct a fair and reasonable enquiry and the non-compliance of the principle of natural justice in conducting the enquiry gravely prejudices the delinquent. In the first instance too the enquiry initiated by the respondent had been quashed and set aside, *inter-alia* on the ground that no findings have been recorded against each article of charge. The enquiry report had not been supplied to the petitioner and no opportunity had been afforded to him to defend the cause. Strangely, without complying the orders of the Deputy Registrar, the respondents again on the basis of the earlier enquiry proceeded to issue a show cause notice proposing punishment of dismissal (Ex. RW-2/E). The malice of having been condemned un-heard again stood as it is. The respondents again committed the same mistake, *i.e,* without substantiating the allegations in each article of charge and proposing to punish the petitioner on the enquiry which has been already set aside by the Deputy Registrar, Co-operative Societies. The same having attained finality the respondents had to start the disciplinary proceedings afresh or denovo and recorded findings against each article of charge to substantiate the misconduct attributed to the petitioner. It was not done.

25. It further transpires from the record that an FIR had also been filed against the petitioner for misappropriation of funds *vis-à-vis* the same proceeds of the federation. The petitioners stands absolved in the two criminal cases by the Learned CJM Solan, placed on record as Ex. P-23 and P-24. It also transpires from the record that one Om Prakash had also been chargesheeted for the same misconduct. After issuing a chargesheet to him he was allowed to continue in service while the petitioner was ordered to be terminated. The petitioner while appearing as PW-1 has testified in the aforesaid terms. There is no cross-examination on this count nor is there any denial about the said factum. The allegations of misappropriation, grave as they are had to be proved at least to probabalise the accurance if not to prove it beyond a shadow of doubt. No endeavor has been made by the respondent to bring anything on record to substantiate the allegations against the petitioner. In fact, the respondents were given ample time and opportunity by authorities concerned to undo the lapse but still no action worth the name was taken by the respondent to substantiate allegations against the petitioner. No enquiry, not even the worth the name was conducted by the respondent. Moreover, the action of the respondent also smacks of discrimination as a similarly situated salesman was let of lightly on similar allegations, rather on a similar cause, whereas the petitioner was sought to be dismissed from service. This action of the respondent is indeed discriminatory and highly arbitrary. In this behalf support can ably be drawn from the recent judgment of the Hon'ble Supreme Court titled as **Pawan Kumar Agarwala** Vs. **General Manager-II Appointing Authority State Bank of India and Ors. 2016 LLR 159**.

26. For all the reasons discussed hereinabove there is no other option but to hold that the respondent had acted in gross violation of the statutory provisions and principles of natural justice while imposing the punishment of dismissal. The enquiry, as has been held above has not been conducted per the rules of natural justice and is liable to be quashed and set aside.

27. Seeing to the peculiar circumstances of the case and more so keeping in view the fact that the allegations against the petitioner were in relations to misappropriation of funds, this Court does not think it fit to order the payment of back wages. The petitioner, however, shall be entitled to seniority and continuity in service from the date of his illegal dismissal. The issues are decided accordingly.

Issue No. 2 :

28. In view of the findings recorded hereinabove the termination of the petitioner having been held to be illegal, the petitioner is entitled to reinstatement in service alongwith seniority and continuity. Though, he shall not be entitled to any back-wages. The issue is thus answered partly in favour of the petitioner.

Issue No. 3 :

29. Nothing has been stated nor anything brought to my notice as to how the relationship of an employer and an employee does not arise with the respondent. As has been held in the discussion hereinabove *supra*, while returning findings against issue No.1, admittedly the petitioner was engaged by the federation as an Assistant Salesman and he continued working as a Salesman till his termination on 31-3-2005. The overwhelming evidence on record clearly shows that the petitioner was an employee of the respondent federation. The issue is thus decided against the respondent.

Issue No. 4 :

30. It has been strenuously urged that the present reference is not maintainable. The matter pertains to the termination/dismissal of an employee working under the H.P. Co-operative Societies Act and as such jurisdiction vests under the said Act. The petitioner cannot be said to be a "workman", under section 2(s) of the Industrial Disputes Act, 1947. The respondents have further placed strong reliance upon the judgment titled as **R.C. Tiwari** Vs. **Madhya Pradesh State Co-operative Marketing Federation Ltd. and others (1997) 5 SCC 125**.

31. The perusal of the pleadings and the evidence on record categorically shows that the lis pertains to the dismissal of the petitioner from service. The terms of reference also talk about the termination of the petitioner without holding any enquiry and as such it would squarely falls within the jurisdiction of this Court. In this behalf support can ably be drawn from the judgment of Hon'ble Supreme Court reported in **(2006) 6 SCC 80 titled as Morinda Coop. Sugar Mills Ltd.** Vs. **Morinda Coop. Mills Workers Union**, wherein it has been categorically held that any dispute relating to alteration of a number or condition of service of workman would not be covered by the expression "touching business of the society". A fair line of distinction has been carved out by the Hon'ble Supreme Court to say that the expression "business of the society" can at best be equated with the actual trading or commercial or other similar business activities of the society. The conditions of service of the workman employed by the society can certainly not be said to be a dispute touching the business of the society.

32. The ratio of the aforesaid decision makes it evident that the dispute is adjudicable by this Tribunal. Even otherwise, it does not lie in the mouth of the respondent to say that the present reference is not maintainable, as the petitioner had sought opportunity from the competent authority under the H.P. Co-orporative Societies Act to approach the appropriate forum for appropriate relief. The liberty had been granted to the petitioner in the presence of the respondent as is clear from the order dated 6-11-2008 passed by the Joint Secretary, Co-operation *vide* mark R-12. Not only this, the respondents on the one hand do not even bother to comply

with the directions passed by the Deputy Registrar Co-operative societies (Ex. P-7), under the H.P. Co-operative Societies Act, and on the other hand tried to impeach the jurisdiction of this Court too. It seems for the respondents neither the functionaries under the Co-operative Societies Act not this Court has jurisdiction to adjudicate upon the lis.

33. For the reasons discussed hereinabove, it is more than apparent that this Court has the jurisdiction to decide the lis. The issue is accordingly decided against the respondent.

Relief :

For all the foregoing reasons discussed hereinabove *supra,* the reference is allowed partly. The termination of the petitioner *w.e.f.* 16-5-2017 is set aside and quashed. As a sequel thereof, the respondents are directed to reinstate the petitioner forthwith alongwith seniority and continuity. Though, he shall not be entitled to any back-wages. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 6th day of April, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 19 of 2010

Instituted on 12-4-2010

Decided on 1-4-2019

Gabriel Employees Union, INTUC, Parwanoo, District Solan, HP through its President/General Secretary . .*Petitioner.*

M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, HP through its Factory Manager/General Manager . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether the dispute raised vide **demand notice dated 8-6-2009 (copy enclosed) by the President/General Secretary, Gabriel Employees Union, Parwanoo, Distt. Solan**

pertaining to the action of the management of M/s Feeral Mogul Bearings India Ltd. Parwanoo, Distt. Solan, H.P. to give alternate employment to S/Sh. Chaman Lal, Preet Pal, Ram Chandar, Krishan Chand, Dilwara Singh, Baldev Singh & Mehar Chand and thereafter suspend them and initiate disciplinary action without complying with section 9-A and 33 of the Industrial Disputes Act, 1947 and Rule-37 of the Industrial Disputes, H.P. Rules, 1974 legal and justified? If not, to what service benefits and relief the concerned workman are entitled to as per demand notice dated 8-6-2009 of the workmen union?"

2. Succinctly, the case set up by the petitioner union is that the appropriate government had sent a reference to this Court on 31-7-2008, wherein, the respondent company had initiated enquiry against three workers and ultimately terminated their services. During the pendency of said reference the respondent suspended six workers namely S/Shri Dwarka Nath, Haider Ali, Mohan Lal, Arvind Singh, Girdhari Lal and one Harvinder Singh. The workers union has requested the respondent not to suspend the workers and reduce their salary as per the long term settlement dated 2-6-2007.

3. The respondent having failed to do so the petitioner union had preferred an application under section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and also sought the stay of the illegal deduction started by the company and from restraining the company from changing the nature of the duties of the workers, in violation of law. The said application came to be dismissed by this Court and against the same CWP was filed before the Hon'ble High Court bearing No. CWP No. 2320 which is pending adjudication.

4. It is further the case of the petitioner union that during the pendency of the dispute the respondent company with an intention to terminate the services of the following workers namely S/Shri Chaman lal, Prit Pal, Ram Chander, Gurumukh Singh, Dilbara Singh, Baldev Singh, Brij Lal, Naresh and Mehar Chand issued alternative employment to them. Due to this offer of alternative employment the petitioner union raised a demand notice and hence the present reference. The demand notice and the list of workmen has been annexed alongwith as Annexure A-1 (Ex. PW-1/B).

5. Per the petitioner union the alternative employment offered by the respondent is illegal as the work which the workers were performing was still available with the respondent and the same is being got done through fresh hands. The respondents have engaged more than hundred fresh new hands. The fresh workers were being offered work on the machines while these workmen have been asked to perform the work of unskilled labour.

6. The workers after receiving the alternative employment letters have filed replies. On receiving the same the respondent company had chargesheeted them. The workers were suspended and the enquiry officer who had been appointed by the respondent also did not conduct the enquiry in a just, fair and impartial manner. The services of some workers have been terminated without prior permission from the competent authority as required under section 33 of the Act. The action of the respondent thus is in violation of the statutory provisions of the Act.

7. It is thus averred by the petitioner union that the action of the respondent company is violative of the provisions of section 9-A and section 33 of the Act. It is thus sought to be declared as null and void. The petitioner further prays that the illegal dismissal of the workers be set aside and quashed and they be allowed to work on the post of operator with all service benefits including full back-wages.

8. While contesting the claim the respondents have *inter-alia* raised the preliminary objections *vis-à-vis* the competence and maintainability of the reference. It is averred by the respondents that the Labour Commissioner was not competent to make the reference. There has been complete non application of mind while making the reference and the respondent company was well within its right, as per the Certified Standing Orders, and the settlement dated 2-6-2007 to ask the workers to perform alternate work and the same did not amount to the change in service conditions.

9. On merits, it is the case of the respondent that disciplinary proceedings had been initiated against three workmen for submitting a false and fabricated medi-claim to the respondent company, which resulted in the dismissal of the three employees and that too after the completion of the enquiry. The petitioner union had gone on illegal and unjustified strike. A dispute having arisen ended up before this Court *vide* reference No. 45 of 2008. The illegal strike was prohibited by the Labour Commissioner on 31-7-2008, however, the workers continued with the strike. Thereafter another reference bearing No. 58 of 2008 came to be made.

10. It is also admitted that six workmen namely S/Shri Dwarka Nath, Haider Ali, Mohan Lal, Arvind Singh, Girdhari Lal and Harvinder Singh were suspended and domestic enquiry was conducted for major misconduct. A proper domestic enquiry was conducted. 2nd show cause notice had been issued, but, since reference Nos. 45 of 2008 and 58 of 2008 were pending adjudication necessary applications for permission under section 33-A of the Act had been filed.

11. As regards in change in service conditions and reduction in salary, there is total denial from the respondent. As per them there is no change in service condition nor there is any violation of section 9-A or the 4th schedule of the Act. It is the contention of the respondent that there is also no violation of settlement dated 26-7-2008. It is denied that alternate work letters were issued to the workers with an intention to terminate their services. Per the respondents it was done due to scarcity, paucity of orders, slow market demand. Since, the workers were sitting idle and were being paid salary without any work, alternate work letters were issued to them and it was specifically clarified in the letters that while carrying out alternate work emoluments shall not be adversely affected. The respondent company was well within its right to ask the workers to work on an alternative site in view of the business requirement and the circumstances. Recession in the Global economy/market is also stated to be another reason for the alternate work given to the workmen. Since, the workmen had failed to perform alternate work as a result of which chargesheets-*cum*-suspension letters were issued to them. The replies filed by the workers to the chargesheets having been not found satisfactory, the domestic enquiry was ordered against the workmen. An enquiry officer was duly appointed and due opportunity was afforded to the workmen to put forth their case. The enquiry officer had submitted his report, upholding the charges leveled against them and thereupon a 2nd show cause notice was issued and necessary permissions under section 33-2(b) of the Act were also sought. The respondent thus pray for the dismissal of the reference.

12. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

13. I notice that on 21-6-2013, the following issues came to be framed by my Learned Predecessor:

1. Whether the action of the respondent management (M/s Federal Mogul Bearings India Ltd. Parwanoo) to give alternative employment to S/Shri Chaman Lal, Preet Pal, Ram Chandar, Krishan Chand Dilwara Singh, Baldev Singh & Mehar Chand and thereafter suspend them and initiate disciplinary action without complying

with section 9-A and 33 of the Industrial Disputes Act, 1947 and Rule-37 of the Industrial Disputes, H.P. Rules, 1974 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits and relief the concerned workmen are entitled to as per demand notice dated 8-6-2009 of the workmen union? . .*OPP.*

3. Whether this petition is neither competent nor maintainable as alleged? . .*OPR.*

4. Relief:

14. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1	Yes.
Issue No. 2	Since, the workmen are already working as operators, in pursuance to refusal under section 33- 2(b), no effective orders are required to be passed.
Issue No. 3	No.
Relief:	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

15. The issue has been formulated collectively, regarding the alternative employment offered to the workmen and even relating to their suspension and disciplinary action initiated thereupon, alleged to be in contravention of sections 9-A and 33 of the Act.

16. Both the learned counsel have fairly conceded that as far as the question of suspension and dismissal thereupon was concerned, the matter has been finally put to rest by the Hon'ble High Court. The approval applications filed by the management dismissing the workmen have been finally decided in favour of the workmen and as of now all of them are working with the respondent management, except those how have finally left or effected some compromise with the respondent management. The approval applications moved by the management were dismissed by the Hon'ble high Court and even consequential benefits including back-wages stands paid in favour of the said workmen.

17. The only question which would thus remain to be adjudicated, now hinges upon the action of the management in offering alternative employment to the said workmen.

18. Though, the question of alternative employment also becomes redundant and otiose, since the action of suspension and dismissal thereupon was primarily based on the refusal of the workmen to undertake work after having been offered alternative employment. Since, the reference has been worded in such a fashion, the issue can be segregated and an attempt can be made to see whether the action of the respondent management in offering alternative employment was legal and justified.

19. The claim petition filed by the petitioner union also primarily talks about the illegality perpetuated by the respondent management in dismissing three workmen, which resulted in a strike and lock-out. Eventually, it led to the dismissal of six workers namely S/Shri Dwarka Nath, Haider Ali, Mohan Lal, Arvind Singh, Girdhari Lal and Harvinder Singh. Certain deductions were also allegedly made in their salaries. This action of the respondent management was stated to be violative of section 33-A of the Act. It however stand finally put at the rest by the Hon'ble High court.

20. The second set of assertion relate to the issue of alternative employment offered to S/Shri Chaman Lal, Prit Pal, Ram Chander, Krishan Chand, Gurmukh Singh, Dilbara Singh, Baldev Singh, Brij Lal, Naresh Kumar and Mehar Chand. It is this set of people who had been offered alternative employment. Since they refused to work at the alternative site suspension followed. Disciplinary enquiry had been initiated. The aforesaid workmen were ordered to be dismissed. The respondent management had preferred applications seeking approval of the dismissal and as per both the learned counsel the aforesaid applications have been dismissed and all the workmen are working with the management, as they were working before the alternative employment was offered to them. In that view of matter in fact much does not survive to be addressed. The action of the respondent management in suspending and dismissing the workmen has not received the assent of the Court and by way of implication, the act and conduct of the respondent company has been held to be illegal and unjustified.

21. Keeping in view of the aforesaid facts, a glance on the claim shows that during the pendency of the earlier dispute the aforesaid six workmen were offered alternative employment. Per the petitioner the said offer was totally illegal as the work which the workers were performing was still available with the respondent and the same was being got done by fresh hands. Per the petitioners they were asked to perform the work of un-skilled nature. They had been working as operators for the last 23 to 25 years and without any notice they had been offered alternative employment.

22. It is further averred by the petitioner union that apart from offering them alternative employment the workers were chargesheeted and eventually ordered to be dismissed after holding an enquiry.

23. Per contra, the case set up by the respondent is that alternative work was offered to the aforesaid workmen due to scarcity, paucity of orders and slow market demand. It is further their case that since 7-7-2008 the workmen have been sitting idle and were being paid salary without any work. Even while altering their work it had been made clear that their emoluments shall not be adversely affected. Per the respondents, the alternative work was offered to the workmen in view of clause-IV, IV-1 (c) of settlement dated 2-6-2007 and clause 24 of the Certified Standing Orders. Since, the workmen did not report to work, thereafter, they were chargesheeted and dealt with departmentally.

24. The President of the union while appearing as PW-1 has deposed on the same lines. He has placed on record the demand notice Ex. PW-1/B. One Shri Balwinder Singh, HR co-coordinator of the respondent management has appeared as RW-1 while deposing on the same lines as is the reply. He has placed on record the letters issued to the workmen for alternate work *vide* Ex. RX-6A to Ex. RX-6G. He has also placed on record the standing orders of the respondent company Ex. R-7. The memorandum of settlement dated 2-6-2007 has been placed on record *vide* Ex. RX-8.

25. The conjoint reading of the pleadings and evidence on record shows that the workmen had undoubtedly been offered alternative job *w.e.f.* 17-4-2019 as is clear from Ex. RX-

6A to Ex. RX-6G. The workmen who were working on machines and had been designated as operators had been assigned the job of filling ID chips in bags and shifting them to the power plant, collection of rejection codes from different machines, shifting of trays and trolley and shifting of scrap yard to designated places. The perusal of the standing orders (Ex. RX-7) placed on record show that a workman could be transferred according to exigency of work from one shop or department to another or from one station to another in the same establishment. If the transfer entailed the movement of a workman from one station to another reasonable notice is required to be given to such a workman. It is no ones case that the workmen had been transferred. There is not a whisper in the pleadings that the workmen had been transferred due to exigency of work. The respondents have tried to take shelter from a memorandum of settlement entered between the workmen and the management on 2-6-2007, but, the conditions postulated in clause-IV apparently talks of rationalization and its effect. It *inter-alia* postulates that in case the company intends to rationalize/streamline/upgrade/change/layout any equipment/tooling, process speed etc. and as a result the workmen are rendered surplus they would be given alternative job within the factory. Yet again, it no ones case that the workmen had been rendered surplus. In case and assuming, it was a case of rationalizing the same had to be done as per a mutual decision with the union and to be made applicable within thirty days of the implementation of the rationalization scheme. It is neither the pleaded case of the respondent management nor has anyone deposed on those lines. Apart from placing the settlement on record (Ex. RX-8) there is nothing on record to remotely suggest that the entire exercise of alternative work was done by the management to rationalize the work of the unit.

26. Besides this what come to the fore is that undoubtedly there was a change in the condition of service of the workmen, so as to render them pliable to do non mechanical work. Admittedly, they were operators and were working on machines. They had been relegated to assist the people working on the machines. In fact as per condition No. 10 of the 4th Schedule "Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen" also calls for an issuance of advance notice. Though, as per the settlement Ex. RX-8, the respondent company had sought protection that the workmen would be adjusted within the company if so required. The import of section 9-A is *vide* enough to include within its ambit the 11th condition specified in the 4th Schedule, that is any increase or reduction in the number of persons employed in any occupation or process or shift. The change of service conditions of the workman in the case in hand, can safely falls in the condition No. 11 of Schedule–IV of the Act.

27. Even otherwise the action of the respondent in suspending and thereupon dismissing the aforesaid workmen have been held to be bad in the eyes of law, as the applications for approval of dismissal from service of the said workmen already stands finally decided in favour of the workmen. It can safely be inferred that the action of the respondent management in offering alternative work was nothing but a subterfuge to terminate the services of the said workmen, for good or bad.

28. Since, the workmen are already admittedly working as operators with the respondent company after the dismissal of the applications, so preferred by the management, suffice it to say that the offer of alternative job was bad in the eyes of law.

29. The learned counsel for the respondent management has placed strong reliance upon the judgment of the Hon'ble Supreme Court titled as **Harmohinder Singh** Vs. **Kharga Canteen Ambala Cantt. (2001) 5 SCC 540** to contend that not all changes are required to be notified. The 11 conditions specified in the 4th Schedule only are required to be notified. Per the learned counsel none of the 11 condition come to the rescue of the workmen. The alternative work give to the workmen does not fall within any of the stipulations enumerated in Schedule-IV.

For all the aforesaid reasons discussed hereinabove, it is rather apparent that the change in conditions were those falling in one of the aforesaid 11 conditions more particularly condition No. 11. I am afraid that the ratio of the aforesaid judgment shall augur to the benefit of the workmen and not the other way around. The learned counsel has also placed reliance upon the judgment of Hon'ble High Court of Dehli titled as Kanhaya Lal *Vs.* The Management of Swantantra Bharat Mill 2016 SCC online Del. 1956. I am afraid this judgment also does not in any way advance the case of the respondent as it primarily related to a case of transfer within the industrial unit. In the present case it is no ones case that the workmen had been transferred. It was just the change of service conditions of the workmen having been asked to perform non mechanical work oblivious of the fact that the workmen were actually operators working on machines for the last 23 -25 years.

30. For all the reasons detailed hereinabove it is thus more than apparent that there were changes in the condition of services of the workmen and admittedly it was without offering any notice of change, as has been admitted by RW-1 too in his cross-examination. Since, the workmen are already working as operators, in pursuance to the refusal under section 33-2(b) of the Act, no effective orders are required to be passed over and above that the workmen should continue as operators as before. This issue is decided accordingly.

Issue No. 2 :

31. For all the reasons recorded hereinabove it is clear that the workmen named in the appendix attached with the demand notice dated 8-6-2009 are either already working as operators with the respondent company or have either compromised or left, in view of the dismissal of the applications under section 33-2(b) filed by the management. For the reasons recorded against issue No.1, the offer of alternative job/work having been held to be bad in the eyes of law and workmen already having been placed as operators and having been granted the back-wages as already ordered by the Hon'ble High Court in the applications under section 33, no further orders are required to be passed, except they shall continue to work as operators, as they are working presently. This issue is decided accordingly.

Issue No. 2.

32. Nothing has been urged nor anything has been brought to my notice as to how the petition is not competent or maintainable. Thus, the issue is decided against the respondent management.

Relief :

For the foregoing reasons discussed hereinabove *supra*, it is held that there were change in the condition of services of workmen, and that too without offering any notice of change. However, since, the workmen are already working as operators, in pursuance to the refusal under section 33-2(b) of the Act, no effective orders are required to be passed, over and above that the workmen shall continue working as operators, as before. Ordered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 1st day of April, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 88 of 2016.

Instituted on 26-9-2016

Decided on 20-4-2019

Suchitra Kumari w/o Shri Vijay Kumar r/o Green Field, Forest Road, Solan, District Solan, HP. . .*Petitioner.*

1. The Director (Human Resources) M/s SRL Diagnostics Ltd. Plot No. D-3, 2nd Floor District Centre Saket, New Delhi, 110017.

2. The Director, Health Services Government of Himachal Pradesh, Vikas Nagar, Kasumpati Shimla. (Principal Employer). . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR.

For respondent No. 1 : Shri Alok Bhardwaj, Advocate.

For respondent No. 2 : Ms. Reena Chauhan, Dy. DA.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Smt. Suchitra Kumari W/o Shri Vijay Kumar, Rajat Niwas, Green Field, Forest Road Solan, District Solan, HP C/o Shri J.C Bhardwaj, President HP AITUC, HQ Saproon Solan, District Solan, HP by i) The Director (Human Resources) M/s SRL Diagnostics Ltd., Plot No. D-3, 2nd Floor, District Centre Saket, New Dehli-110017 & (ii) The Director Health Services, Government of Himachal Pradesh, Vikas Nagar, Kasumpati Shimla w.e.f. 23-1-2014 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of reinstatement, back-wages, compensation, seniority and other service benefits the above aggrieved workman is entitled to from the above school management.?"

2. The averred case of the petitioner is that she came to be appointed as a Laboratory Assistant, though designated as a Junior Scientific Officer with the respondent No. 1, *vide* letter dated 15-11-2013. She continued working uninterruptedly as such till 23-1-2014, when she was illegally removed/retrenched from service without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The last drawn salary of the petitioner was Rs. 9500/- per month.

3. The respondent No. 2 had entered into an agreement with the respondent No. 1 to provide diagnostic service to the people of Himachal Pradesh on notified rates. The work and conduct of the petitioner had been satisfactory through-out, no complaint regarding her work was

ever pointed out by her immediate superior, nor any show cause notice or chargesheet was ever issued to the petitioner. Therefore, her termination falls within the ambit of section 2-oo of the Act. The illegal clauses contained in the appointment letter do not have any overriding effect on the labour laws. Her termination thus is illegal and based on the principle of "hire and fire" which is bad in the eyes of law.

4. It is further averred by the petitioner that one Ms. Shalu, her immediate superior has conspired in connivance with Dr. Manish Bagai to remove her. She has been removed from service while casting a stigma against her work and conduct, which she came to know only from her termination letter. The petitioner was never served any show cause or chargesheet against the alleged misconduct. She was not provided any opportunity to explain her position and was condemned unheard. No enquiry was ever conducted against the petitioner. The petitioner has worked as per the directions of her immediate superior and every work was carried with the knowledge of Ms. Shalu and if any incident had happened she was equally responsible for the same. The petitioner however has been removed on the basis of false and unproved charges.

5. The termination of the petitioner is also stated to be violative of sections 25-G & 25-H of the Act as persons junior to her namely Shri Manuj and Yashpal have been recruited in place of the petitioner.

6. It is thus prayed that the respondent management be directed to reinstate the petitioner with full back-wages, seniority and other consequential benefits.

7. While contesting the claim the respondents have filed separate replies.

8. The respondent No.1, the contesting respondent has raised preliminary objections *vis-à-vis* maintainability as the petitioner was not stated to have completed 240 days and as such did not fall under the provisions of section 25-B of the Act. As per the respondent the petitioner is also estopped from filing the present petition due to her own acts, deeds, conduct and acquiescence. The petitioner is stated to have fabricated the report of one patient and issued the same to another patient by manually changing the details such as name, age and sex. The said misconduct was admitted by the petitioner and as per the terms and conditions of her appointment she was terminated on 23-1-2014. The respondent No.1 is stated to be a provider diagnostic company having collection centers spread across 400 cities/towns in India and having a footprint spanning over 1601 collection centers offering a comprehensive range of over 3500 diagnostic tests as on 31st July, 2017. The petitioner having fabricated a report on the letter head of the respondent company has tarnished the image of the company and as such wrong practice could not be tolerated, and hence her termination. The petitioner is also stated to have concealed material facts from this Court.

9. On merits, it is admitted that the petitioner was appointed on 15-11-2013 and she had been terminated on 23-1-2014, her last drawn salary being Rs. 9500/- per month. It is denied that the petitioner was illegally removed/retrenched from service. As per the respondent her services were terminated due to the serious misconduct detailed in the preliminary para which was admitted and accepted by the petitioner. It is also submitted by the respondent that even earlier the petitioner was involved in such kind of activities and many times oral warnings had been given to her. The petitioner did not mend her ways. Her approach was casual with respect to the job and responsibility assigned to her. Since, she had accepted and admitted her misconduct her services were terminated as per the terms and conditions of the appointment letter.

10. It was thus prayed that the present petition may be dismissed being devoid of any merits.

11. The respondent No. 2 while filing separate reply has also raised preliminary objections *vis-à-vis* maintainability and cause of action. Per the respondent No. 2 the laboratory services had been outsourced to the respondent by way of an agreement and the department had no roll or intervention in the engagement of technical staff by the respondent No.1.

12. While filing rejoinder, the petitioner controverted the averments in the replies and further reiterated those in the statement of claim.

13. I notice that on 9-3-2018, the following issues had come to be framed by my Learned Predecessor:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 23-1-2014 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjsutified? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petitioner has no cause of action against respondent No. 2 as alleged? . .*OPR.*

5. Relief:

14. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement with seniority and continuity but without any back-wages.
Issue No. 3	No.
Issue No. 4	Yes.
Relief:	Reference answered partly in favour of the petitioner and against the respondent No.1 per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 & 3 :

15. All these issues are being taken up together as they are correlated and intermingled.

16. The petitioner admittedly had been engaged by the respondent No.1 as a Laboratory Assistant on 15-11-2013. Her services were indeed terminated on 15-11-2013.

17. Per the respondents the petitioner had been terminated for grave misconduct. The petitioner is alleged to have fabricated a report of one patient and issued the same to another patient by manually changing the details *i.e.* the name, age and sex of the patient. Per the

respondents for this gross misconduct the services of the petitioner was dispensed with as per the terms and conditions of the appointment letter. The appointment letter has been placed on record as Mark PX.

18. As per the appointment letter the petitioner was to work on probation for a period of six months from the date of her joining and as per clause 19 of the appointment letter she could have been terminated without any notice in case she was found to have committed any gross misconduct.

19. The respondents have examined one Shri Anil Sharma, the Manager Human Resources as RW-2 and even per him the services of the petitioner was terminated on 23-1-2014, as per the terms and conditions of the appointment letter on the basis of serious misconduct of fabricating a report which she herself had confirmed and admitted. He has admitted that no chargesheet for misconduct has been served upon the petitioner. No enquiry officer had been appointed. He has also admitted that no opportunity of hearing was given to the petitioner. He has however admitted that the company had sent some E-mails to the petitioner and she had admitted her misconduct.

20. The termination letter dated 23-1-2014 (Mark RX-2) shows that the termination had been ordered as per clauses 18 & 19 of the appointment letter. It further reveals that the respondents have found the conduct of the petitioner violative of her duty and as a result of non-compliance with applicable company customer service requirement. The letter further reads thus:

> "We have received complaint & feedback about poor experience and misconduct at SRL Solan centre by a customer. A false report of one patient has been given to the another patient which was created by manually, changes in the name, age and sex of another patient. This has been confirmed and accepted by you on the mail. This shows callous attitude towards your responsibilities and non-adherence to the company norms. This wrong conduct of yours has cause severe damage to the reputation of the organization as you have indulged in false and wrong reporting of a patient's sample."

21. No doubt clauses 18 & 19 of the letter do provide that an employee could be terminated during the probation period by serving a notice of seven days or even without any notice in case an employee committed an act of gross misconduct but in the case in hand it is itself the case of the respondent that because of gross misconduct the services of the petitioner had been terminated. That being the case it was incumbent upon the respondent to have held some enquiry to prove the charges of misconduct, so attributed to the petitioner. The text and tenor of the termination letter Mark RX-2 is not only punitive in nature but also stigmatic.

22. Undoubtedly, a period of six months has been provided as probation period but the respondents in their wisdom have not exercised discretion to curtail the period of probation simplicitor, which certainly would have been non-punitive in nature. An order of discharge under clause 8 of the appointment letter simplicitor would have entailed discharge without any stigma being laid against the petitioner. However, the same was not resorted to by the respondent. They chose to seek recourse to clause 18 & 19.

23. Once the respondents decided to terminate the services of the petitioner and that too on the ground of misconduct as has been reflected in the reply, oblivious of clauses 18 & 19 the respondents had to undertake some sort of enquiry or offer some opportunity of hearing to the petitioner before passing such a punitive or a stigmatic order. Even a probationer is entitled to certain protection and his or her services cannot be terminated arbitrarily, nor can those services

be terminated in a punitive manner, more so without complying with the principles of natural justice. Her work having not been found satisfactory a mere letter of discharge as per Clause 8 would have sufficed, but, once the respondents thought it proper to terminated her services and that too for misconduct, at least some enquiry worth the name had to be conducted and an opportunity of hearing given to the petitioner to plead her case. Admittedly, no such steps have been taken by the respondents. The services of the petitioner could not have been terminated in a punitive manner without complying with the principles of natural justice. The order of termination Mark RX-2 being stigmatic in nature thus is illegal in the eyes of law as have been discussed hereinabove. In this behalf support can ably be drawn from a judgment of the Hon'ble Supreme Court titled as **V.P Ahuja** Vs. **State of Punjab & Haryana and others 2000 LLR 473**.

24. For all the reasons discussed hereinabove it is held that the termination of the services of the petitioner was indeed illegal and unjustified. Since, the allegations against the petitioner perse was detrimental to the working of the respondent company, the petitioner shall not be entitled to any back-wages. The termination of the petitioner thus is set aside and quashed. She is ordered to be reinstated. The petitioner shall be entitled to seniority and continuity, though without any back-wages. All the issues are decided accordingly.

Issue No. 4 :

25. As per the memorandum of agreement between the Government of Himachal Pradesh, the respondent No.1 company and Rogi Kalyan Samiti (RKS) had entered into a tripartite agreement, the respondent No.1 had been outsourced Laboratories to be managed and run by well qualified technical experts to be engaged by the respondent No. 1, the same is abundantly clear from Ex. RW-1/B the memorandum of agreement entered interse the Government of HP, SRL and RKS. One Shri Narotam Dass while appearing as RW-1 has categorically deposed that the respondent No. 2 has no role in the appointment and termination of the employees deployed by respondent No.1. Even in his cross-examination he has denied that the salary of the employees is being paid by respondent No. 2. It is denied that the respondent No. 2 is the principal employer of the petitioner. Even otherwise there is nothing on record to remotely suggest that the respondent No. 2 is the principal employer of the petitioner. The testimony of both RW-1 and RW-2 clearly shows that the relationship of an employer and an employee merely exists between petitioner and respondent No. 1. The petitioner indeed thus has no cause of action against respondent No. 2. The issue is decided accordingly.

Relief :

For the foregoing reasons discussed hereinabove *supra,* the reference is allowed partly. The termination of the petitioner is held to be illegal, unjust and violative of the principles of natural justice and the Industrial Disputes Act. The same is accordingly set aside. The respondent No.1 is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back-wages. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 20th day of April, 2019.

CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 07 of 2015

Instituted on 12-2-2015

Decided on 5-4-2019

Raj Kumar Sharma s/o Shri Ram Nidhi Sharma, r/o House No. 506-A, Sector-2, Panchkula, Haryana . .*Petitioner.*

Versus

M/s Gillette India Ltd. (through its General Manager), Plot No. 4, Aparal, Park, Katha, Bhatoli Kalan, Tehsil Baddi, Distt. Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Sipahiya, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Shri Raj Kumar Sharma, r/o House No.506-A, Sector-2, Panchkula, Haryana w.e.f. 24-05-2013 (as alleged by workman) by the Employer/General Manager, M/s Gillette India Limited (P&G), Plot No. 4, Aparal Park, Katha, Bhatoli Kalan, Tehsil Baddi, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In short, the case set up by the petitioner is that he was employed as an Inspector Quality Control on 20-9-1985 and joined on 1-10-1985 with the Indian Shavings Products Ltd., Bhawadi, Rajasthan (thereafter taken over by the respondent management) and continued working as such till 23-5-2013. His pay including all allowances at that time was Rs. 74,700/- per month, *i.e.* 23-5-2013. The petitioner remained in the employment of the respondent for about twenty eight years and his past record was very good.

3. It is further the case of the petitioner that on 1-11-1994 he was promoted as Keyman level-1, in the year 2003 he was promoted as Keyman level-2 and eventually on 1-11-2010 he was promoted as Keyman level-3. On 1-12-2003, the petitioner had been transferred from Bhiwadi to Baddi and thereafter he continued as such with the respondent management.

4. In the year 2007, the HR Manager of the company Shri Rahul Bharat started maltreating and harassing the petitioner. In the year 2007, no increment was given to him, however, thereupon he again started receiving his increments. On 1-2-2008, he had been directed to report for duty at Bhiwadi District Alwar, Rajasthan. He reported to one Shri R. K. Bhatt, Assistant Manager, but, he was not allowed to join. The petitioner again made requests to

Shri Rahul Bharat, Manager HR on 4-2-2008, but despite his requests he was not allowed to join. The petitioner on the contrary was asked to tender his resignation on 4-2-2008. The petitioner was constrained to raise a demand notice on 13-2-2008 and on intervention of the Labour-*cum*- conciliation Officer, Baddi, the petitioner had reported for duty at Baddi on 23-7-2008. Thereupon the HR department started discriminating against the petitioner and eventually on 22-8-2013, he had been asked by the management to come to Panchkula to resolve the whole issue. When the petitioner reached Panchkula, he was threatened and forced to sign the resignation. He had approached the senior management of the respondent company on 23-5-2013 and even sent an E-mail to the HR country head, but to no avail. The discharge letter dated 23-5-2013 is thus stated to be totally illegal and against the statutory provisions of the Industrial disputes Act, 1947 (hereinafter referred as to Act). The respondents had also deposited an amount of ₹ 7,31,155/- towards his gratuity in his Bank and the said amount has not been utilized by the petitioner till date.

5. The termination of the petitioner is thus alleged to be in violation of the provisions of sections 25-F, 25-N, 25-G and 25-H of the Act. The petitioner thus claims that his termination be declared illegal, unlawful, null & void. The discharge letter dated 23-5-2013 may be quashed and the petitioner be reinstated with full back-wages, seniority and continuity of service.

6. While contesting the claim, the respondents have raised preliminary objections *vis-à-vis* maintainability and the petitioner having not approached this Court with clean hands. It is also the case of the respondent that the claim petition is not maintainable as the petitioner is not a workman under section 2(s) of the Act as he was drawing monthly salary of ₹ 74,716/- per month, and he was performing the managerial, administrative and supervisory duties. Per the respondent when the petitioner was discharged he was working as Quality Control-Keyman and the duties of the petitioner were managerial, administrative and supervisory in nature. The petitioner is also stated to be gainfully employed.

7. On merits, it is the case of the respondent management that the petitioner was appointed as a Quality Control Inspector *vide* letter dated 20-9-1985 and as per the stipulation therein the services of the petitioner could be terminated after one month's notice or by paying one month's salary/wages in lieu of notice. The services of the petitioner were discharged on 23-5-2013 by the respondent in terms of the appointment letter dated 20-9-1985.

8. It is further the case of the respondent that after having been appointed as Quality Control Inspector on 1-10-1985, he came to be promoted as Quality Control Keyman on 1-1-1994. He was transferred from Gillette Bhiwadi to Packing Industry Baddi on 31-3-2004. At the time of his discharge he was drawing ` 74,716/- per month and as such he was not a workman under section 2(s) of the Act.

9. It is further averred by the respondent that the petitioner had been given the benefits of Vikas Path level-1, 2 and 3 *w.e.f.* 1-1-1994, 11-11-2003 and 1-11-2010, the petitioner was performing managerial, administrative and supervisory duties as is clear from his profile attached with the appointment letter. It is denied that the petitioner was ever harassed or maltreated by the HR Manager. Since, the petitioner failed to report back at Gillette India Ltd. at Bhiwadi, he was asked to report at Baddi, where to he was performing managerial, administrative and supervisory duties. He came to be discharged *vide* letter dated 23-5-2013. Rest of the contents of the claim were denied. The respondent thus prayed that the petition be dismissed.

10. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 28-12-2015, the following issues came to be framed by my Learned Predecessor:

1. Whether the termination of the services of petitioner *w.e.f.* 24-5-2013 by the respondent is illegal and unjustified as alleged? . .*OPP.*

2. If issue No. 1 proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petitioner is not a workman as alleged? . .*OPR.*

5. Relief:

12. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1	Yes.
Issue No. 2	Entitled to lump sum compensation of ` three lakhs.
Issue No. 3	No.
Issue No. 4	No.
Relief:	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 3 & 4 :

13. Both these issues are being taken up together for discussion as they are correlated and intermingled.

14. Per the respondent the petitioner at the time of discharge was drawing a salary of ₹ 74,716/- per month and was primarily performing administrative, supervisory and managerial duties and as such does not fall within the purview of "workman" as contemplated under section 2(s) of the Act. As per the respondent the petitioner was appointed initially on 1-10-1985 as a Quality Control Inspector and thereupon promoted as a Quality Control Keyman during 1994, 2003 and 2010. Thus, per the respondent the present reference is not maintainable as the petitioner does not fall within the definaiton of "workman".

15. The petitioner no doubt has admitted that he was being paid ₹ 74,716/- per month as wages at the time of his discharge but as per the petitioner he was a workman as he never performed any work of supervisory or managerial nature. As per the petitioner his joining letter clearly shows that he was appointed as Quality Control Inspector and the job profile clearly shows that he was a workman. It is not denied even by the petitioner that he was in-fact thereupon promoted as Keyman Quality Control but he has denied in his cross-examination that his duty was supervisory. Per the petitioner his duty was to physically check and verify the

quality of the products. Per him he used to verify quality of incoming material and outgoing product alone.

16. The petitioner has further examined one Shri Deveshwar Sharma as PW-2 to place on record the adult worker register wherein the name of the petitioner has also been shown as a worker.

17. It thus emerges from the facts on record that the petitioner admittedly was appointed as a Quality Control Inspector and he was thereupon promoted as Keyman Quality Control. To this extent there is no dispute even interse the parties. It is also admitted that at the time of his discharge the petitioner was drawing around ₹ 74,000/- and odd as wages.

18. Before adverting any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of section 2(s) of the Act. The Section reads as under:

> "Workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

19. The definition itself stipulates as to who a workman would be. However, clause-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a "workman" (in our case clause-III and IV are relevant to be noticed). The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding `10,000/- per mensem and discharge function mainly of a managerial nature would also not come within the purview of the term "workman".

20. Viewed in this context a bare reading of the appointment letter issued to the petitioner Ex. PW-1/C shows that he was appointed as a Quality Control Inspector at a basic pay of ₹ 719/-. The work or the job profile is not reflected in Ex. PW-1/C. The petitioner has further placed on record the letter dated 20-11-2003 whereby the petitioner had been promoted as Keyman Quality Control level-2 and his basic had increased to ₹ 1200/- *vide* letter Ex. PW-1/E.

21. It is accompanied with the flow chart of the quality wing, showing the carrier progression titled as "Vikaspath". It shows that at the lowest rank is the quality control person (Additional Q.C. Skill) and after graduating from level 1 to level 3, he is promoted as a Keyman which admittedly the petitioner was working at the time of his discharge. Admittedly he was inducted as a Quality Control Inspector level-1 in the year, 2005. Above the Keyman are shown the technician and above the technician an Executive. This is but all the evidence led by the petitioner to show that he was never working in a supervisory capacity or that he was not working in a managerial or administrative capacity.

22. Per contra the respondents have examined one Shri Sanjeev Kumar, Manager, HR as RW-1. No doubt he has in his affidavit Ex. RW-1/A highlighted that the job profile of the petitioner, that whit when he was deputed to Bhiwadi his job was Routine and direct inspection work, manpower deployment in the shift, guide seniors on routine quality problems, train inspectors and operators as per training plan, participation in quality council and TPM. The petitioner was also responsible for records maintenance/spare and consumables, inspection of export material, carry out analysis of samples received from customers and while working in Dehli he carried out daily audit of incoming material/process inspection/final inspection/quality records/outgoing product inspection, carry out run ability trails/carry out drop test/report the trail test, train ancillary inspectors and operator on quality procedures, co-ordinate qualification of new machines/process, resolve routine quality problems, prepare monthly trend on quality rejection, work on process improvement and spoilage reduction, certification of rejected materials. As per the said witness the job profile of the petitioner while posted at Baddi was implementation of quality system, responsible for quality related projects like eliminating spoilage, ensure that health safety and environment standard are adhered, checking and authorization of bill payment *w.r.t* production volumes, authorizing and checking scrap reporting, to enquire compliance at the site. However, in his cross-examination he has deposed that he has brought no original record regarding the assigning of duties by the petitioner. He has also further admitted that the petitioner has no power to depute, appoint, promote, terminate the services of any worker. The respondents have placed on record the initial appointment letter of the petitioner and even a letter dated 17-12-1993 promoting him as a keyman Quality Control in the basic salary of ₹ 2155/-. The only documentary evidence on record trying to show the job profile of the petitioner has been placed on record as mark A-2 and Mark A-3. The perusal of the two documents shows that the primary duty of the petitioner was to undertake inspection work as allocated by the Assistant Manager or the Executive. Therefore, it is more than apparent that even as a Quality Control Keyman the petitioner was reporting to Assistant manager and the Executive over and above him. In fact as Quality control Keyman the petitioner was basically required to ensure that the incoming materials and the finished goods were as per quality guidelines. He was to conduct improvement activities as per the directions of Assistant Manager and Executive and nothing beyond it. The discharge letter Ex. RX-2 on record issued by the respondent themselves categorically states that the petitioner was employed in the company in terms of appointment letter dated September, 1985 (wrongly recorded as 1-4-1996). It is thus clear that even while discharging the petitioner the respondents have categorically admitted that the petitioner was employed in terms of the aforesaid letter appointing him as a Quality Control Inspector. It is otherwise also admitted by the respondents in their pleadings.

23. As far back in the year 2006, the Hon'ble Supreme Court in **Anand Regional Coop. Oil Seeds Growers Union Ltd.** Vs. **Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548** has held that:

> **"In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due**

importance. For determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also the terms of the appointment in the job performed are relevant consideration. Being incharge of the section alone and that too shall one relating to Quality control would not answer the text".

24. Though the learned counsel for the respondent has placed reliance on judgment titled as **Somnath Tulshi Ram Galande** Vs. **Presiding Officer, IInd Labout Court Pune and others 2008 (4) Mh.L.J 163**, judgment titled as **German Remedies Ltd. Vs. Michael Gabriel Lopse and another 1999 (2) LLN 199** and the judgment of the Hon'ble High Court of Madras titled as **Management of Fenner India Ltd. Maduri Vs. Presiding Officer, Principal Labour Court 2001 (3) LLN 670**. Keeping in view of the categorical law laid down by the Hon'ble Supreme Court in Anand Regional Coop. case discussed hereinabove (supra), I am afraid the ratio of the aforesaid judgment will not come to the rescue of the respondent management. Even otherwise on facts and keeping in view the evidence on record more particularly the Carrier Progression Chart (Vikas path) appended along-with Ex. PW-1/B it is more than clear that the petitioner was not working in a supervisory capacity and so does mark A to A-3 categorically reflects so. Even the Hon'ble Bombay High Court in **Somnath Tulsidas Glande's case** referred hereinabove *supra*, while placing reliance upon a judgment of the Hon'ble Supreme Court has itself has held that:

"Where a particular workman is a supervisor within or without the definition of "workman" is "ultimately a question of fact, at best one of mixed fact and law" and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organizational set up of the particular unit of industry and the like factors."

25. The Hon'ble High Court had come to record a finding in the aforesaid case that the appellant therein was undertaking supervisory and managerial work, but it was on the facts and circumstances of that case. The other two judgments have also been decided on facts and as such do not auger to the benefit of the respondent management.

26. Even otherwise it is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of conclusive evidence on record. Reference may be made in this behalf to a judgment of the Hon'ble Supreme Court **titled as Sonepat Co-operative Sugar Mills Ltd** Vs. **Ajit Singh (2005) 3 SCC 232**.

27. The perusal of the evidence on record discussed hereinabove conclusively goes to show that oblivious of the pay package of the petitioner, he does fall within the purview of the term "workman" as has been detailed above. The issues are decided accordingly.

Issues No. 1& 2 :

28. Both these issues are intermingled and correlated and as such are being taken up together for discussion.

29. Admittedly, the petitioner was discharged by the respondent management *vide* letter Ex. RX-2. The respondents in its wisdom resorted to the protection so afforded to them in the appointment letter dated 20th September 1985 (Ex. PW-1/C) wherein it was stipulated in provisio-5(b) that the services of the petitioner can be terminated after one month's notice or by paying one month's salary/wages in lieu thereof. No doubt there was a provision in the appointment letter that the petitioner could be terminated after giving one month's notice or one month's salary/wages in

lieu thereof but admittedly it is against the statutory provisions of section 25-F & 25-N of the act. In fact in the present case apparently the provisions of section 25-N of the act would have come into play as admittedly the respondent management would be governed by the provisions of Chapter-VB as they had more than 100 workmen employed with them.

30. The reference having been worded loosely to say whether the termination of the petitioner was without complying with the provisions of the Industrial Disputes Act, it could safely be inferred that the termination was in violation of the provisions of section 25-N of the Act. In any case it can still be held that it is certainly violation of section 25-F. Moreover, the petitioner having put in almost twenty eight years, the least, which was expected from the respondent management was to afford the petitioner an honorable exit, till his superannuation, if nothing else. The terms and conditions mentioned in the appointment letter dated 20-9-1983 that the services of the petitioner can be dispensed with after issuing one month's notice cannot over ride the statutory protection available to the workman under section 25-N/25-F of the Industrial Disputes Act, 1947. The respondents were bound in law to have taken recourse to the provisions of the Act, while terminating the services of the petitioner, which certainly was not done in the case in hand.

31. Now, the petitioner has crossed the age of superannuation. The action of the respondent in discharging the petitioner on 24-5-2013 is illegal and bad in the eyes of law being violative of the statutory provisions of the Act, sections 25-N/25-F as admittedly no notice and retrenchment compensation was issued to the petitioner. As a sequel Ex. RX-2 is quashed and set aside. Since, the petitioner has already reached the age of superannuation it would not be in fitness of things to order the reinstatement of the petitioner. It would be in the interest of justice that compensation is awarded to the petitioner in lieu of reinstatement/back-wages and arrears.

32. In this behalf support can ably be drawn from the recent judgment of the Hon'ble Supreme Court titled as **District Development Officer and another** Vs. **Satish Kanti Lal Amrelia (2018) 12 SCC 298 and Rashtrasant Tukdoji Maharaj Techincal Education Sanstha, Nagpur** Vs. **Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

33. For all the reasons detailed hereinabove and having regard to the totality of circumstance an amount of ` three lakhs is awarded to the petitioner in lieu of his right to claim reinstatement, back-wages and arrears, in full and final satisfaction of the dispute. The aforesaid amount shall be paid by the respondent within three months from the date of the order failing which it shall carry interest @ 9% per annum till realization thereof. Both the issues are decided accordingly.

Relief :

For the foregoing reasons discussed hereinabove *supra*, the reference is answered in favour of the petitioner and against the respondent. The discharge letter dated 23-5-2013 (Ex. RX-2) is quashed and set aside. Since the petitioner has already crossed the age of superannuation rather than ordering reinstatement, the respondent is directed to pay a sum of ₹ three lakhs only as compensation to the petitioner in lieu of his right to claim reinstatement, back-wages and arrears in full and final satisfaction of the dispute. The aforesaid amount shall be paid by the respondent within three months from the date of the order failing which it shall carry interest @ 9% per annum till realization thereof. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 5th day of April, 2019.

CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

Jeet Chand

V/s

The G.M.- HOP, HPPCL & Ors.

24-04-2019.

Present: None for the petitioner.

Sh. Manoj Chauhan, Ld. Advocate for respondent No.1

Sh. Naresh Sharma, Advocate for respondent No. 2 &3.

The petitioner had been ordered to be served through registered AD. The acknowledgement has been received back. It is clear that the petitioner stands duly served. In fact, even earlier notices had been issued to the petitioner on 15-01-2019; none had appeared for the petitioner even then that is on 16-03-2019. Thereupon notices were issued through registered AD post. The petitioner has been duly served. However, none has put in appearance on behalf of the petitioner even today. The matter has been called thrice. It is thus apparent that the petitioner is not keen to prosecute the lis. In his absence it is difficult for this court to proceed any further as no claim has been filed. Except the reference there is nothing on record. The same is thus dismissed as having not been pressed. The reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced
24-04-2019

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 40 of 2012

Instituted on 14-6-2012

Decided on 29-4-2019

Rajneesh Kumar s/o Shri Rattan Chand, r/o Village & P.O. Sansowal, Tehsil Haroli, District Una, H.P. through Shri J.C Bhardwaj, President H.P. AITUC, HQ Saproon, Solan, H.P.

. .*Petitioner.*

M/s Hindustan Uniliver Ltd., Khasra No. 94-96, 395-409, Village Balyana Barotiwala, Industrial Area, Tehsil Kasauli, District Solan, 173220, H.P. through its Managing Director.

. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J. C. Bhardwaj, AR

For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of services of Shri Rajneesh Kumar s/o Shri Rattan Chand r/o Village and P.O Sansowal, Tehsil Haroli, District Una H.P., Assistant Technician by the Managing Director M/s Hindustan Uniliver Ltd., Khasra No. 94-96, 355-409, Village Balyana, Barotiwala, Industrial Area, Tehsil Kasauli, District Solan, H.P. w.e.f. 30-6-2011 after conducting enquiry is proper and justified? If not, what amount of back-wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"

2. The case set-out by the petitioner is that he was appointed as an Assistant Technician and continued working as such with the respondents till 30-6-2011, when his services were illegally dismissed by the respondent management, though, some domestic enquiry had preceeded his termination but it was an illegal and a malafide process resorted to by the respondent.

3. Per the petitioner no chargesheet was ever supplied to him, even during the course of enquiry it was not given to him. No defence assistant was allowed when the witnesses of the management were examined and the petitioner was imposed the unwarranted punishment of dismissal on the basis of a conspiracy hatched by some security personal, due to a hot exchange of words with one Mr. Ram Saran (Ex. Inspector) the security incharge, who was the main architect of the conspiracy.

4. Further per the petitioner the allegation of theft attributed to him were false and illogical as none could have escaped from the factory premises when the gates were locked and four security personal were present on the spot. The matter had been reported to the Police, who on investigation had found that no such episode had taken place. The allegation of the management were found to be concocted, baseless and false and the Police had failed to register any FIR regarding the incident.

5. The enquiry was biased, partial and only interested witnesses were examined by the management and still nothing could be proved against the petitioner beyond reasonable doubt. The management had failed to produce any witness from amongst the workmen who were present in good number, when the shift got over on 6-4-2011.

6. It is further the case of the petitioner that despite his several requests chargesheet was not served to the petitioner in the language which he understood *i.e*. Hindi. The Certified Standing Orders of the company also bears a clause that the chargesheet shall be issued only in the language which the workman properly understand.

7. The petitioner had even opposed the appointment of Shri Sanjeev Sharma as an enquiry officer, the same was made clear by the petitioner before the commencement of the proceedings. The enquiry officer did not allow the petitioner to be represented by a defence assistant. No opportunity was afforded to the petitioner to examine the witnesses of the management. The enquiry officer thus was biased and so is his report. The respondent company at the relevant time was availing the services of two legal practitioner whereas he has not even allowed a defence assistant.

8. It is further the case of the petitioner that the enquiry was committed in hot-haste. Even though the statements of the management witnesses were contradictory, the defence of the petitioner was rejected. The issuance of the 2nd show cause notice also did not reveal the reasons for the acceptance of the enquiry report. Extreme penalty of dismissal was not justified nor the past service record of the petitioner was considered nor he was afforded any opportunity to file reply to the show cause notice. There was an absolute denial of opportunity. The enquiry thus was vitiated in all respects being against the provisions of natural justice and as such null and void.

9. The petitioner thus prayed that the domestic enquiry conducted by the respondent may be declared null, void and inoperative, the same may be set aside and the petitioner be reinstated with all consequential benefits.

10. While controverting the plea raised by the petitioner the respondents raised a preliminary objection *vis-à-vis* maintainability, as the petitioner was stated to have concealed true and material facts from this Court. Per the respondents the petitioner had been chargesheeted for the misconduct of theft. A just, proper and a fair enquiry as per the principles of natural justice and the model standing orders had been conducted against the petitioner in which he had duly participated. The charges having been duly proved the services of the petitioner were dispensed with.

11. On merits, it was admitted by the respondent that the petitioner had been engaged *w.e.f.* 9-9-2004, he was confirmed as an Assistant Technician on 9-3-2006 and continued working as such till his dismissal on 30-6-2011. His last drawn salary was Rs. 6075/- per month. The charges leveled against the petitioner *vide* chargesheet dated 7-4-2009 stood proved in a domestic enquiry. Before dismissing the services of the petitioner, he was provided with the copy of the enquiry report. The petitioner had not objected to the enquiry proceedings or the enquiry report. Eventually, he was dismissed on 30-11-2006. He had been placed under suspension on 7-4-2009 and he was being paid suspension allowance from the said date till the date of his dismissal.

12. It is denied that the petitioner was not allowed the services of the defence assistant as one Mr. Surjit Singh who was stated to be the defence assistant of the petitioner. The petitioner is stated to have participated in each and every date and the enquiry proceedings were duly signed by him. The petitioner had examined the witnesses and had also examined himself. He did not examine any other witness despite opportunity having been given to lead evidence. The enquiry officer concluded proceedings and submitted the enquiry report whereby the charges stood proved.

13. Further per the respondents the chargesheet dated 7-4-2009 served on the petitioner was duly replied by Sunil Verma, Advocate of the petitioner *vide* his reply dated 28-4-2009. It was denied that no document had been supplied to the petitioner along-with the chargesheet.

14. While highlighting the episode for which the petitioner had been chargesheeted, it is averred by the respondent that on 6-4-2009 at about 9.05 APM when the petitioner reached main gate for exiting the factory premises of Hindustan Uniliver Ltd. at Khasra Nos. 94-96,

355-409 Village Balyara, Barotiwala, Industrial Area, Tehsil Kasauli, District Solan, H.P. the security guard Mr. Punu Ram while carrying out body search, tablets/cakes of soap inside the undergarments. The petitioner was caught red-handed by Mr. Punu Ram and asked to stand on one side. Before Punu Ram and other two security officials could remove soap tablets/cakes Mr. Rajneesh Kumar pushed Mr. Punu Ram and ran away with stolen soap tablets/cakes towards Pitambari Private Ltd. a factory located opposite to the main gate of Hindustan Uniliver Ltd. On seeing the petitioner running and Punu Ram shouted "Rajneesh Bhag Gaya Pakro" and thereafter Punu Ram along-with other security personnel, who were present at the main gate *i.e.* Shri Ajit Singh, Fireman, Shri Rameshwar Sharma, Security Officer and Shri Ram Saran, Ex-Inspector ran after the petitioner, but the petitioner escaped in the wheat fields and into the bushes taking advantage of the dark. It was submitted that the petitioner committed theft. Theft is a major misconduct and as such an enquiry was conducted into the said misconduct by an independent and impartial enquiry officer.

15. Per the respondent the petitioner had duly participated in the enquiry proceedings and the same was conducted in a just, air and a proper manner, as per the principles of natural justice after affording him a fair hearing. The enquiry was conducted in Hindi language. The petitioner was given sufficient opportunity to defend himself. The other averments made in the statement of claim were denied being wrong, false, baseless and incorrect. The respondent thus prayed that the reference be dismissed being devoid of any merits.

16. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

17. I notice that on 4-6-2013, the following issues had come to be framed by my Learned Predecessor:

1. Whether the termination of services of Shri Rajneesh Kumar *w.e.f.* 30-6-2011 by the respondent without conducting fair and proper enquiry is unjustified and improper? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits, the petitioner is entitled? . .*OPP.*

3. Whether the claim petition filed by the petitioner is neither competent nor maintainable as alleged? . .*OPR.*

4. Relief:

18. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1	Yes.
Issue No. 2	As per operative part of the award.
Issue No. 3	No.
Relief:	Reference answered partly in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 & 3 :

19. All these issues are being taken up together as they are correlated and intermingled.

20. Primarily, the grouse of the petitioner is that a fair and an impartial enquiry had not been conducted by the respondent. It is thus the case of the petitioner that no documents were ever supplied to him with the chargesheet nor were they supplied during the course of the enquiry proceedings. Per the petitioner even the services of a defence assistant was not provided to him. He was given no opportunity to defend himself. Even an FIR had been registered against him but nothing fruitful came out of it and the criminal proceedings had to be dropped. The factual matrix of the allegation of theft attributed to the petitioner was thus denied. Per the petitioner one Shri Ram Saran had falsely implicated the petitioner in connivance with the other security personal.

21. Per contra as per the respondents all possible opportunity was granted to the petitioner to defend himself. The petitioner had been chargesheeted for having committed theft. A just, proper and a fair enquiry as per the principles of natural justice and the Model Standing Orders (Industrial Employment Standing Orders) Act, 1973 was conducted and the petitioner had duly participated in the proceedings. The enquiry report was based upon the oral as well as documentary evidence adduced during the course of the enquiry proceedings. One Mr. Surjit Singh has duly appeared as a defence assistant on behalf of the petitioner. The enquiry report had been duly supplied to the petitioner and thereupon he was eventually dismissed from service on proved charges of theft.

22. The petitioner while appearing as his own witness (PW-1) has reiterated the averments made in the statement of claim. Per him on 7-4-2009, chargesheet Ex. P-3 had been issued to him on the charges of theft and even an enquiry was initiated against him. No documents were supplied to the petitioner along-with the chargesheet nor were they supplied during the course of the enquiry. The chargesheet was nothing but a bundle of lies and the security incharge Ram Saran had concocted a false case because of some verbal duel between the two. No independent witness except the security staff has been examined during the course of the enquiry. He has placed on record the proceedings of the enquiry *vide* Ex. P-4. Per the petitioner he had even sought permission to bring his witnesses *vide* Ex. P-5. Despite the same he was not allowed to examine his witnesses. The petitioner had also submitted a report to the Police *vide* Ex. P-7 that he was being coaxed to resign.

23. Per the petitioner the copy of the enquiry report dated 20-8-2009 (Ex. P-8) was supplied to him but without affording any opportunity of replying to the same, he was dismissed from service on 30-6-2011. Thereupon he had preferred an appeal to the respondents *vide* Ex. P-10 which also came to be eventually dismissed on 8-8-2011 *vide* Ex. P-11.

24. In his cross-examination, he has admitted that initially he had refused to receive chargesheet and it was received by him through registered post. He also admits that the reply to the same was prepared by his Advocate Mr. Sunil Verma, which bears his signatures. He has denied that he had appointed Shri Surjeet Singh as his defence assistant. Per him the company had nominated him. Though, he had made no complaint regarding the said factum to anyone. He has admitted that the copies of the enquiry proceedings had been given to him. He denied that he was allowed to cross-examine the witnesses of the management, but, does submit that he had signed the day to day proceedings after having read the contents of the same. He has admitted that

he had given his statement on 6-7-2009. He has admitted his signatures on his statement of the same date. Per him he had been asked to present his witnesses on 11-7-2009 but he did not produce them on that day. He has admitted his signatures on the list of witnesses Ex. R-2. He has admitted that he had received the enquiry report.

25. The respondents have examined Ms. Namita Prabhakar, the HR Manager as RW-1 and the enquiry officer Shri Sanjeev Sharma as RW-2.

26. Per the HR Manager RW-1 the chargesheet dated 7-4-2009 was issued to the petitioner and he had filed reply to the same. The reply having not been found satisfactory domestic enquiry was conducted. The petitioner was suspended on the same day. The enquiry was conducted as per the principles of natural justice and a fair hearing was afforded to the petitioner. She has placed on record her affidavit Ex. RW-1/A, the letter of authority Ex. RW-1/B and the full & final details of the payments made to the petitioner *vide* Ex. RW-1/C.

27. The enquiry officer Shri Sanjeev Sharma while appearing as RW-2 has placed on record his affidavit Ex. RW-2/A. He has admitted his signatures on the enquiry proceedings Ex. P-4.

28. In the cross-examination Ms. Namita Prabhakar RW-1 has categorically admitted that no documents were supplied to the petitioner along-with the chargesheet. She has also admitted that the report was also filed with the Police and an FIR had been registered against the petitioner. He has admitted that after duty hours the workers leaves the factory premises in groups. She has also admitted that except the security guards no other worker has been examined by the management. She has admitted that no 2nd show cause notice was issued to the petitioner along-with the enquiry report.

29. The enquiry officer during his cross-examination again has admitted that there is no mention in the enquiry proceedings that the documents alongwith the chargesheet had been supplied to the petitioner. The defence assistant was provided to the petitioner at his request after the examination of three management witnesses. He has though state that he had asked the petitioner for defence assistant on the first day of enquiry. As per this witness, the petitioner was afforded due opportunity to cross-examine the management witnesses. He admits that during the course of enquiry it was brought to his notice that a police report had also been filed by the management but he did not know that the police investigation had ruled out any such incident. He has admitted that apart from the security personnel no other witnesses were examined by the management. He has admitted that the enquiry officer had not supplied documents Ex. RW-2/B and Ex. RW-2/C to the petitioner, which happens to be the security report on theft case dated 6-4-2009 and a security report on recovery of soap behind the locker room on 4-4-2009. He has admitted that during the course of the enquiry it was brought to his notice that one Ram Saran was had an hot exchange with the petitioner earlier.

30. This is but the entire evidence led by the parties. The oral and the documentary evidence, on record go to show that admittedly no documents were supplied to the petitioner either with the chargesheet or even during the course of enquiry. The enquiry officer while appearing as RW-2 has even admitted that the documents Ex. RW-2/B and Ex. RW-2/C, which happens to be the security report on theft which is attributed to the petitioner on 6-4-2009 and recovery of soap bars on 4-4-2009. Both the documents were an important piece of evidence and obviously had been relied by the respondent management to bring home the guilt of the accused. Since, no documents were supplied to the petitioner along-with chargesheet and the same were not even made available to him during the course of enquiry it was incumbent upon the enquiry officer to at least have supplied these documents *i.e.* Ex. RW-2/B and Ex. RW-2/C, to

defend his case properly. At least at some stage the petitioner had to be supplied the documents to be relied by the management.

31. By now it is fairly well settled that any material to be relied upon during disciplinary proceedings had to be supplied in advance to the chargesheeted employee and the failure thereof is fatal. A reasonable opportunity to defend an employee in the proceedings and the principles of natural justice also demanded that none is condemned un-heard. This proposition is trite and can well be inferred from the ratio laid down by the Hon'ble Supreme Court in **Pepsu Road Transport Corporation** Vs. **Lachhman Dass Gupta and Another reported in 2002-1-LLJ286** and reiterated in **Government of Andhra Pradesh and Ors** Vs. **A.Venkata Raidu 2007-1-LLJ 178** and **Union of India and others** Vs. **S.K Kapoor 2011-II- LLJ-627 (SC).**

32. The non-supply of the documents gain added significance. In the present case as admittedly a police report had been filed regarding the same incident by the management which is admitted by both RW-1 and RW-2. The FIR lodged against the petitioner was cancelled as the police recorded a finding that after investigation no such incident was found to have happened. The non supply of vital documents and that too, relied by the management gains further importance and its non supply thereof indeed jeopardized the efforts of the petitioner to furnish his defence properly.

33. Another thing which prominently comes to the fore is that before imposing punishment of dismissal no opportunity was afforded to the petitioner to at least reply to the enquiry report. It is no doubt true that unless the certified standing orders provides a 2nd show cause notice on the proposed punishment is not a condition precedent as has been held by the Hon'ble Supreme Court in **Associate Cement Company Ltd.** Vs. **T.C Shrivastva and others 1984 (Supp.) SCC 87,** but, the fact remains that at least reply has to be sought on the findings recorded by the enquiry officer.

34. RW-1 Smt. Namita Prabhakar nowhere has stated in her affidavit Ex. RW- 1/A that any comments/reply was sought from the petitioner on the findings recorded by the enquiry officer *vide* Ex. P-8. Though, in her cross-examination she has stated that no 2nd show cause notice was issued but a letter along-with enquiry report was given to the petitioner and the same was treated as a 2nd show cause notice. There is no documentary evidence placed on record in this behalf. The enquiry officer had only sent the copy of the same to the Manager of the Factory as is explicitly clear from Ex. P-8. If not 2nd show cause notice at least the comments/reply of the petitioner was the minimum which should have been called for by the respondent management. It was not done.

35. Both the situations discussed hereinabove clearly shows that the respondents had failed to abide by the well settled principles of natural justice. The non-supply of documents to be relied upon and the act of the respondents in not even seeking the reply/comments on the enquiry report has caused *de-facto* prejudice to the petitioner. It is thus manifestly clear that the non-supply of material to be relied upon during the course of enquiry has breached the principles of natural justice. The irresistible conclusion is that the delinquent had been denied reasonable opportunity of defending himself in the proceedings. The enquiry is thus held to be bad in the eyes of law. The enquiry was not fair and proper and as such is set aside and quashed.

36. Nothing has been brought to my notice as to how the claim is not competent and maintainable. The issue is thus decided against the respondent.

37. The learned counsel for the respondent/management while placing reliance upon the judgment titled as **Divisional Controller, Karnatka State Road Transport Corp.** Vs. **M.G Vittal Rao (2012) 1 SCC 442** contends that seeing to the nature of allegations the employer has

lost confidence in the employee and as such if the punishment is found to be disproportionate even then he be not re-instated. I am afraid even the ratio of this judgment may not come to the rescue of the respondents, as in the case in hand the termination has been set aside due to non-adherence of the principles of natural justice and not on the proportionality of punishment imposed. The process has even found to be fault and hence the re-engagement.

38. However, while adverting to the question as to what benefits the petitioner is entitled to. Suffice it to say that keeping in view the nature of allegations which primarily related to theft, this Court does not think it fit to order the payment of back wages to the petitioner. The petitioner is ordered to be re-instated forthwith, He shall be entitled to seniority and continuity, however, without any back-wages. All the issues are decided accordingly.

Relief :

For the foregoing reasons discussed hereinabove *supra,* the reference is allowed partly. The enquiry proceedings are held to be bad in the eyes of law. It has not been conducted in a fair and a proper manner. As a sequel thereto the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to seniority and continuity, however, without any back-wages. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 29th day of April, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

TOURISM AND CIVIL AVIATION DEPARTMENT

NOTIFICATION

Shimla-2, *the* 25*th July*, 2019

No. Tsm-A(4)-5/2018.—In exercise of the powers vested in him under rule-8 of Himachal Pradesh Miscellaneous Adventure Activities Rules, 2017, the Governor of Himachal Pradesh is pleased to nominate following non-official member in the Technical Committee for Trekking and Expeditions Activities with immediate effect in the public interest:—

Sh. Naveen Thakur c/o M/s Saivism Adventure Tour and Travels, Thakur Niwas Panthaghati, Shimla.

By order,

KAMLESH KUMAR PANT,
Pr.Secretary (Tourism & CA).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Mukul Sharma s/o Sh. Bhushan Sharma, resident of Mohalla Chameshani, Chamba Town, Tehsil & District Chamba, H. P., aged 31 years (Husband).

and

Neha Mehta d/o Shri Surinder Kumar Mehta, V.P.O. Kiani, Tehsil & Distt. Chamba, H.P., aged 25 years (Wife) . .*Applicants*.

Versus

1. The General Public
2. The Registrar of Marriage, Himachal Pradesh, Shimla

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriages Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith relevant records and affidavits stating therein that they have solemnized their marriage on dated 13-11-2017 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Municipal Council Chamba, Distt. Chamba, H.P. well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriages and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 07-08-2019 at 10.00 A.M. either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 3rd Day of July, 2019

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Joginder Kumar s/o Sh. Hardayal, Village Kakretu, P.O. Mehla, Tehsil & District Chamba, H. P., aged 23 years.

and

Bhavna Kumari d/o Shri Narender Kumar, Village Aello, P.O. Sidhkund, Tehsil & Distt. Chamba, H.P. aged 24 years . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriages, Himachal Pradesh, Shimla

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriages Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith relevant records and affidavits stating therein that they have solemnized their marriage on dated 21-06-2018 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Gram Panchayat Gagla, Distt. Chamba, H.P. well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriages and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 05-08-2019 at 10.00 A.M. either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 29th Day of June, 2019

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Chain Lal s/o Sh. Kailasho, Village Jijred, P.O. Sarahan, Tehsil & District Chamba, H. P., aged 31 years (Husband).

and

Sushma Devi d/o Shri Thuniya Ram, Village Bhadra, P.O. Badgran, Tehsil Bharmour, Distt. Chamba, H.P., aged 28 years (Wife) . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriages, Himachal Pradesh, Shimla

Subject.—Registration of Marriage under Section 8(4) of the H.P. Registration of Marriages Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith relevant records and affidavits stating therein that they have solemnized their marriage on dated 18-06-2018 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of G.P. Guwad, Development Block Mehla, Distt. Chamba, H.P. well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriages and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 07-08-2019 at 10.00 A.M. either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 3rd Day of July, 2019

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Dr. Murari Lal, Marriage Officer-cum-**Sub-Divisional Magistrate, Dalhousie, District Chamba (H.P.)**

In the matter of :

1. Shri Kulwant Singh s/o Shri Kishan Lal, resident of Village Kandei, P.O. Chunan, Tehsil Dalhousie, District Chamba (H.P.) Age 25 years.

2. Aanchal Bizalwan d/o Shri Dinesh Singh, r/o Lahari Post Saho, Tehsil & District Chamba (H. P.) Age 24 years . . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriages under section 16 of the Special Marriage Act, 1954.

Shri Kulwant Singh and Aanchal Bizalwan have filed an application alongwith an affidavit in the court of undersigned under section 16 of the Special Marriage Act, 1954 stating that they have solemnized their marriage on 21-09-2018 and that they have been living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file an objection personally or in writing before this court on or before 08-08-2019. After that no objection will be entertained and marriage will be registered.

Seal.

DR. MURARI LAL,
Marriage Officer-cum-*Sub Divisional Magistrate,*
Dalhousie, District Chamba (H.P.).

ब अदालत सहायक समाहर्ता द्वितीय वर्ग, ककीरा, जिला चम्बा, हिमाचल प्रदेश

मिसल नम्बर : 04 / 2019 तारीख मजरूआ : 01–05–2019 अग्रिम तारीख पेशी :08–08–2019

श्री चुहडू राम सुपुत्र श्री दिवानो, निवासी गांव घट्टू, डाकघर भराडी, उप–तहसील ककीरा, जिला चम्बा, हिमाचल प्रदेश .. प्रार्थी।

बनाम

आम जनता .. प्रत्यार्थीगण।

प्रार्थना–पत्र बराये नाम दरुस्ती बारा।

श्री चुहडू राम सुपुत्र श्री दिवानो, निवासी गांव घट्टू, डाकघर भराडी, उप–तहसील ककीरा, जिला चम्बा, हिमाचल प्रदेश ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र मय अन्य कागजात इस आशय से गुजारा है कि उसका नाम चुहडू राम है जोकि ग्राम पंचायत गडाना के परिवार रजिस्टर व आधार कार्ड में सही दर्ज है। लेकिन राजस्व विभाग के महाल चलेरा में गलती से चुहडू दर्ज है जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार राजपत्र हि0 प्र0 द्वारा सूचित किया जाता है कि प्रार्थी के नाम दरुस्ती बारे यदि किसी को कोई उजर / एतराज हो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 08–08–2019 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिये जाएंगे।

आज दिनांक 06–07–2019 मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

शशी कुमार शर्मा,
सहायक समाहर्ता द्वितीय वर्ग,
ककीरा, जिला चम्बा, हिमाचल प्रदेश।

ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 08 ना0 तह0 रीडर पुखरी / 2019 / 461 तारीख दायरा : 10–07–2019

जितेन्द्र कुमार पुत्र श्री हन्स राज, गांव व डाकघर लडोग, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश .. वादी।

बनाम

आम जनता ..... प्रतिवादी।

विषय.––राजस्व कागजात माल में नाम दरुस्ती करने बारे प्रार्थना–पत्र।

जितेन्द्र कुमार पुत्र श्री हन्स राज, गांव व डाकघर लडोग, उप–तहसील पुखरी, जिला चम्बा ने इस अदालत में आवेदन–पत्र व ब्यान हल्फी पेश किया है कि मेरा व मेरे पिता का नाम आधार कार्ड, पैन कार्ड, शिक्षा प्रमाण–पत्र व राशन कार्ड में जितेन्द्र सिंह व हन्स राज दर्ज है जो बिल्कुल सही व दरुस्त है परन्तु राजस्व अभिलेख पटवार वृत्त प्राहनूई मोहाल चण्डी में मेरा नाम व मेरे पिता का नाम गल्ती से जितेन्द्र कुमार व हंसो लिखा गया है जो कि गलत दर्ज हुआ है।

अतः प्रार्थी का ब्यान हल्फी स्वीकार करते हुए इस इश्तहार / मुस्त्री मुनादी व चस्पानगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी व प्रार्थी के पिता के नाम का इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन या वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थी व प्रार्थी जितेन्द्र सिंह उर्फ जितेन्द्र कुमार व पिता हंसो उर्फ हंस राज दर्ज करने के आदेश पटवारी, पटवार वृत्त प्राहनूही को पारित कर दिये जायेंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 15–07–2019 को जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
उप–तहसील पुखरी, जिला चम्बा (हि0 प्र0)।

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ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 07 ना0 तह0 रीडर पुखरी / 2019 / 460 तारीख दायरा : 08–07–2019

रत्न चन्द पुत्र श्री प्यार सिंह, गांव डुग्ग, डाकघर झुलाडा, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश ..... वादी।

बनाम

आम जनता ..... प्रतिवादी।

विषय.––जन्म पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत जन्म पंजीकरण हेतु प्रार्थना–पत्र।

रत्न चन्द पुत्र श्री प्यार सिंह, गांव डुग्ग, डाकघर झुलाडा, उप–तहसील पुखरी, जिला चम्बा ने इस अदालत में एक आवेदन–पत्र व ब्यान हल्फी पेश किया है कि मेरे लड़के नामक पियुष का जन्म दिनांक 11–10–2015 को गांव डुग्ग, पंचायत झुलाडा में हुआ है परन्तु किसी कारणवश मेरे बेटे के जन्म पंजीकरण का इन्द्राज ग्राम पंचायत झुलाडा में नहीं करवाया गया है। प्रार्थी इस न्यायालय के माध्यम से अपने बेटे के जन्म पंजीकरण करने का आदेश ग्राम पंचायत झुलाडा को जारी करवाना चाहता है।

अतः प्रार्थी का ब्यान हल्फी स्वीकार करते हुये इस इश्तहार / मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के बेटे के जन्म पंचायत में पंजीकरण करने हेतु किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन या वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जायेगा व उक्त प्रार्थी के बेटे के जन्म पंजीकरण करने के आदेश सचिव ग्राम पंचायत झुलाडा को पारित कर दिये जायेंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 15–07–2019 को जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
उप–तहसील पुखरी, जिला चम्बा (हि0 प्र0)।

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ब अदालत श्री जगत राम, सहायक समाहर्ता द्वितीय श्रेणी, मुलथान, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा नं0 : 03 / 2019

श्री आलम चन्द पुत्र जोगी पुत्र जंगलू, निवासी गांव डुंगरी, डाकघर व तहसील मनाली, जिला कुल्लू (हि0 प्र0) ..... प्रार्थी।

बनाम

आम जनता ..... प्रतिवादी।

विषय.––राजस्व अभिलेख में नाम दरुस्ती बारे।

उपरोक्त विषय पर आवेदक श्री आलम चन्द पुत्र जोगी पुत्र जंगलू, निवासी गांव डुंगरी, डाकघर व तहसील मनाली, जिला कुल्लू (हि0 प्र0) ने इस अदालत में प्रार्थना–पत्र मय शपथ पत्र इस आशय से गुजार रखा है कि उसका नाम आधार कार्ड, पंचायत रिकार्ड, भारत निर्वाचन आयोग, पहचान–पत्र तथा अन्य सभी दस्तावेजों में आलम चन्द पुत्र जोगी पुत्र जंगलू दर्ज है परन्तु महाल तरमेहर, तहसील मुलथान के राजस्व अभिलेख में सुरेश कुमार पुत्र श्री जोगी पुत्र जंगलू दर्ज हुआ है जो कि गलत है। इसे दरुस्त करके आलम चन्द उपनाम सुरेश कुमार पुत्र जोगी पुत्र जंगलू दर्ज किया जाये।

अतः सर्वसाधारण को इस इश्तहार राजपत्र द्वारा सूचित किया जाता है कि यदि किसी को राजस्व अभिलेख में नाम दरुस्ती बारे कोई उजर व एतराज हो तो वह दिनांक 07–08–2019 या इससे पूर्व असालतन या वकालतन अदालत हजा में हाजिर होकर अपना एतराज प्रस्तुत का सकता है, अन्यथा नियमानुसार राजस्व अभिलेख में नाम दुरुस्ती आदेश पारित कर दिये जायेंगे। उपरोक्त तिथि के बाद कोई उजर व एतराज जेरे समायत न होगा तथा प्रार्थना–पत्र पर नियमानुसार उचित आदेश पारित कर दिये जायेंगे।

आज दिनांक 15–07–2019 को हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
मुलथान, जिला कांगड़ा (हि0 प्र0)।

ब अदालत तहसीलदार व अखत्यारात सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0

श्री Lhazom बनाम आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री Lhazom s/o Sh. Chhamba, निवासी Mcleodganj Dharamshala, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री Tsering Youdon की जन्म तिथि 15–03–1965 है परन्तु एम0सी0 Dharamshala में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Tsering Youdon का जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 06–08–2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 09–07–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा, हि0 प्र0।

ब अदालत तहसीलदार एवं सहायक समाहर्ता, प्रथम वर्ग ऊना, जिला ऊना, हि0 प्र0

इश्तहार मुशत्री मुनादी जेर धारा 23 भू–राजस्व अधिनियम, 1954

दरख्वास्त बमुराद दरुस्ती राजस्व रिकार्ड महाल ऊना खास, तहसील व जिला ऊना (हि0प्र0) जमाबन्दी साल 2012–13 में रविन्द्र सिंह की बजाये राजेन्द्र सिंह दर्ज करने बारे।

बनाम

आम जनता

बजरिया जमादार तहसील कार्यालय ऊना

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी राजेन्द्र सिंह पुत्र श्री रघुवीर सिंह, वासी मलाहत, तहसील व जिला ऊना, हिमाचल प्रदेश ने प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम रविन्द्र सिंह, महाल ऊना खास की खेवट नं0 479 मिन में गलत चला आ रहा है जबकि उसका सही नाम राजेन्द्र सिंह है। इस बारे अपना आधार कार्ड, पैन कार्ड, राशन कार्ड, वोटर कार्ड व शपथ–पत्र प्रस्तुत किया है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि उक्त नाम की दरुस्ती बारे अगर किसी व्यक्ति को कोई उजर हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 05–08–2019 को प्रातः 10.00 बजे हाजिर आवें न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर नियमानुसार मुकद्दमा का निपटारा कर दिया जायेगा।

आज दिनांक 11–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना, हि0 प्र0।

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ब अदालत तहसीलदार एवं सहायक समाहर्ता, प्रथम वर्ग ऊना, जिला ऊना, हि0 प्र0

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इश्तहार मुशत्री मुनादी जेर धारा 23 भू–राजस्व अधिनियम, 1954

दरख्वास्त बमुराद दरुस्ती राजस्व रिकार्ड महाल अजनौली, तहसील व जिला ऊना (हि0प्र0) जमाबन्दी साल 2013–14 में हरबंस कौर की बजाये वसन्ट कौर दर्ज करने बारे।

बनाम

आम जनता

बजरिया जमादार तहसील कार्यालय ऊना

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया श्रीमती ईशरी पुत्री प्रभ दियाल जात वाहती, वासी कोटला कलां, तहसील व जिला ऊना, हिमाचल प्रदेश ने प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि उसकी माता का नाम हरबंस कौर महाल अजनौली की खेवट नं0 573 में गलत चला आ रहा है जबकि उसकी माता का सही नाम वसन्त कौर है। इस बारे अपना शपथ–पत्र व मृत्यु प्रमाण–पत्र प्रस्तुत किया है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि उक्त नाम की दरुस्ती बारे अगर किसी व्यक्ति को कोई उजर हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 07–08–2019 को प्रातः 10.00 बजे हाजिर आवें न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर नियमानुसार मुकद्दमा का निपटारा कर दिया जायेगा।

आज दिनांक 10–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना, हि0 प्र0।

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न्यायालय श्री विजय कुमार राय, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि0 प्र0)

दावा संख्या : / Teh. Una/M. Reg./2018

श्री राजन कुमार पुत्र श्री राम आसरा, वासी वार्ड नं0 11 ऊना, तहसील व जिला ऊना (हि0 प्र0)

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान वाला में श्री राजन कुमार पुत्र श्री राम आसरा, वासी वार्ड नं0 11 ऊना, तहसील व जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना–पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 30–11–2017 को श्रीमती वर्षा पुत्री श्री बलबीर चन्द, वासी बुंगा साहिब, जिला रोपड़ (पंजाब) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण नगर परिषद् ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण नगर परिषद् ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को उजर या एतराज हो तो वह दिनांक 13–08–2019 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 10–07–2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
(विजय कुमार राय),
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग) हरोली, जिला ऊना (हि0प्र0)

संजीव कुमार पुत्र गुरमेल सिंह पुत्र दातू r/o House No. 26, Ward No. 08, Chopra Petrol Pump Wali Gali, Near New Bus Stand Kotkapura, Faridkot Punjab .. वादी।

बनाम

आम जनता .. प्रतिवादीगण।

दरख्वास्त बमुराद दरुस्ती नाम राजस्व अभिलेख महाल, टाहलीवाल ऊपरला, तहसील हरोली, जिला ऊना, खेवट 287, खतौनी नम्बर 362, नम्बर खसरा 621, रकबा तादादी 0–55–10 है0 जमाबन्दी साल 2017–18 वाक्या महाल टाहलीवाल ऊपरला, तहसील हरोली, जिला ऊना।

संजीव कुमार पुत्र गुरमेल सिंह पुत्र दातू r/o House No. 226, Ward No. 08, Chopra Petrol Pump Wali Gali, Near New Bus Stand Kotkapura, Faridkot Punjab ने इस न्यायालय में आवेदन पत्र दरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थी का नाम होशियार सिंह पुत्र गुरमेल चन्द गलत दर्ज किया गया है। अतः प्रार्थी का नाम होशियार सिंह पुत्र गुरमेल चन्द की बजाये संजीव कुमार पुत्र गुरमेल चन्द सही दर्ज किया जावे।

अतः इस इश्तहार अखबार/मुशत्री मुनादी के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 19–08–2019 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले

समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 17–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
नायब तहसीलदार एवं सहायक समाहर्ता, द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

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ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग) हरोली, जिला ऊना (हि0प्र0)

हरजिन्द्र सिंह पुत्र भजन सिंह पुत्र वतन सिंह, गांव कांटे, तहसील हरोली, जिला ऊना .. वादी।

बनाम

आम जनता .. प्रतिवादीगण।

दरख्वास्त बमुराद दरुस्ती नाम राजस्व अभिलेख महाल, कांटे, तहसील हरोली, जिला ऊना, खेवट 558, खतौनी 724, नम्बर खसरा 2848, रकबा तादादी 0–55–97 है0 जमाबन्दी साल 2013–14 वाक्या महाल कांटे, तहसील हरोली, जिला ऊना।

हरजिन्द्र सिंह पुत्र भजन सिंह पुत्र वतन सिंह, गांव कांटे, ने इस न्यायालय में आवेदन पत्र दरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थी का नाम कुलविन्द्र सिंह पुत्र भजन सिंह गलत दर्ज किया गया है। अतः प्रार्थी का नाम कुलविन्द्र सिंह पुत्र भजन सिंह की बजाये हरजिन्द्र सिंह पुत्र भजन सिंह सही दर्ज किया जावे।

अतः इस इश्तहार अखबार / मुशत्री मुनादी के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 19–08–2019 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर / एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 17–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
नायब तहसीलदार एवं सहायक समाहर्ता, द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी (नायब तहसीलदार), हरोली, जिला ऊना (हि0 प्र0)

भगेल सिंह पुत्र सोम नाथ, वासी हरोली, तहसील हरोली, जिला ऊना (हि0 प्र0),

श्रीमती प्रेम लता पुत्री दलवीर सिंह, वासी चण्डीगढ़ पंजाब

बनाम

आम जनता

आवेदन–पत्र अधीन धारा 8(4) of Marriages Act, 1996 & Rule 4(2) of 2004.

भगेल सिंह पुत्र सोम नाथ, वासी हरोली, तहसील हरोली, जिला ऊना (हि0 प्र0) ने इस न्यायालय में निवेदन किया है कि उनकी शादी दिनांक 18–11–1986 को हुई है लेकिन उनकी शादी ग्राम पंचायत अभिलेख में दर्ज न है और शादी दर्ज करने बारे प्रार्थना–पत्र प्रस्तुत किया है।

अतः सर्वसाधारण को इस इश्तहार/नोटिस के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 19–08–2019 को प्रातः 10.00 बजे अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर उजर/एतराज पेश कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर/एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय द्वारा यह मान लिया जाएगा कि किसी को इस सम्बन्ध में कोई आपत्ति न है और शादी तिथि सम्बन्धित रिकार्ड में दर्ज करने बारे नियमानुसार आगामी कार्यवाही अमल में लाई जाकर आदेश पारित कर दिया जाएगा।

आज दिनांक 17–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी (ना0 तहसीलदार),
हरोली, जिला ऊना, हि0 प्र0।

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न्यायालय श्री विजय कुमार राय, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि0 प्र0)

दावा संख्या : /Teh. Una/M. Reg./2019

Sh. Chetan Sharma s/o Sh. Ved Parkash Sharma, r/o Near Dera Baba Rudru Temple, Ward No. 1 Basal Upper, Tehsil & Distt. Una (H.P.).

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान वाला में Sh. Chetan Sharma s/o Sh. Ved Parkash Sharma, r/o Near Dera Baba Rudru Temple, Ward No. 1 Basal Upper, Tehsil & Distt. Una (H.P.). ने इस न्यायालय में प्रार्थना–पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 29–09–2017 को Ms. Rimpy Sharma d/o Late Sh. Satinder Kumar Sharma, r/o Vill. & P.O. Raipur Sahoran, Tehsil & Distt. Una (H.P.) के साथ हुआ है लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण ग्राम पंचायत बसाल अप्पर, तहसील व जिला ऊना (हि0 प्र0) में न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण ग्राम पंचायत बसाल अप्पर, तह0 व जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 20–08–2019 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है अन्यथा उसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 19–07–2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत तहसीलदार एवं सहायक समाहर्ता, प्रथम वर्ग ऊना, जिला ऊना, हि0 प्र0

इश्तहार मुशत्री मुनादी जेर धारा 23 भू–राजस्व अधिनियम, 1954

दरख्वास्त बमुराद दरुस्ती राजस्व रिकार्ड महाल रामपुर, तहसील व जिला ऊना (हि0प्र0) जमाबन्दी साल 2012–13 में शिन्दी लाल की बजाये सुरिन्द्र कुमार दर्ज करने बारे।

बनाम

आम जनता

बजरिया जमादार तहसील कार्यालय ऊना

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी सुरिन्द्र कुमार पुत्र श्री ईशर चन्द पुत्र दया राम, जात वाहती वासी रामपुर, तहसील व जिला ऊना, हिमाचल प्रदेश ने प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम शिन्दी लाल महाल रामपुर की खेवट नम्बरान 375 ता 378, 416, 417 में गलत चला आ रहा है जबकि उसका सही नाम सुरिन्दर कुमार है। इस बारे राशन कार्ड, आधार कार्ड, परिवार रजिस्टर की नकल, हल्फिया ब्यान व विकेक कुमार पुत्र सुरिन्दर कुमार का 10वी का सर्टिफिकेट प्रस्तुत किया है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि उक्त नाम की दरुस्ती बारे अगर किसी व्यक्ति को कोई उजर हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 19–08–2019 को प्रातः 10.00 बजे हाजिर आवें न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर नियमानुसार मुकद्दमा का निपटारा कर दिया जायेगा।

आज दिनांक 19–07–2019 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर।

हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना, हि0 प्र0।

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ब अदालत तोरूल रवीश, रजिस्ट्रेशन एवं मैरिज ऑफिसर अम्ब, जिला ऊना (हि0 प्र0)

विनोद कुमार बनाम आम जनता

विषय.––शादी पंजीकरण प्रमाण–पत्र जारी करने बारे।

श्री विनोद कुमार पुत्र श्री प्रकाश चन्द, वासी गांव अम्बोआ, तहसील घनारी, जिला ऊना (हि0 प्र0) ने एक दरख्वास्त प्रस्तुत की है जिसमें उसने लिखा है कि उसकी शादी श्रेष्ठा देवी सुपुत्री श्री जगत राम, वासी गांव कुनेरन, तहसील घनारी, जिला ऊना, हि0 प्र0 के साथ दिनांक 28–10–2018 को हुई है का पंजीकरण किया जाकर उसे शादी पंजीकरण प्रमाण–पत्र दिया जावे।

अतः इस नोटिस के माध्यम से समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को शादी पंजीकरण बारे कोई एतराज/आपत्ति हो तो वह दिनांक 20–08–2019 को या इससे पहले असालतन या वकालतन हाजिर अदालत होकर पेश करें अन्यथा एकतरफा कार्यवाही अमल में लाई जाकर प्रार्थी को शादी पंजीकरण प्रमाण–पत्र जारी कर दिया जायेगा तथा बाद में कोई उजर काबिले समायत न होगा।

आज दिनांक 08–07–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ है।

मोहर।

हस्ताक्षरित/–
रजिस्ट्रेशन एवं मैरिज ऑफिसर,
अम्ब, जिला ऊना (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है